

**WAKE COUNTY NURSING FACILITY BED NEED  
COMMENTS ON COMPETING APPLICATIONS**

**SUBMITTED BY:**

**E.N.W., LLC  
BellaRose Nursing and Rehab Center, Inc**

**October 3, 2011**

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## SUMMARY

### Introduction

The following is a summary of applications filed for the 240 allocated beds:

- 20-bed additions to existing facilities – two applications
- 60-bed addition to facility currently closed but with licensed beds – one application
- 90-bed nursing facility located on campus of senior living community – one application
- New 100-bed facility – three applications
- New 120-bed facility – nine applications

Several applicant sponsors filed multiple applications in various locations.

Also, it is important to note that although there are 240 allocated beds, the actual calculated bed need for Wake County in the 2011 SMFP is 509 beds. Timely development of approved beds is important to meet the shortage of beds.

Since there are 240 total beds allocated, the CON Section has the opportunity to approve several projects in different geographic areas of the county. Given the high need for beds in Wake County, a strong argument can be made for approving one or both of the 20-bed additions proposed since these projects should have a shorter timetable for the constructing and licensing of the beds compared to the time required for development of a brand new facility. If both of the 20-bed applications are approved, then two of the 100-bed applications for a new facility could be approved to fully allocate the 240 beds. If only one of the 20-bed applications is approved, then there would be an opportunity for the approval of a new 100-bed facility and a new 120-bed facility. We fully support approval of one or both of the two 20-bed additions.

### History of Developing Projects on a Timely Basis

In considering applicants for approval, the past history of developing projects on a timely basis should be considered in awarding approvals for a new facility in Wake County. As described in the attached comments, a number of the competing applicants have approved projects that have yet to be completed, and several applicants and/or their affiliates have projects in North Carolina that date as far back as 2007 and 2008 and are not yet under construction. The CON Section should not award any new facilities to these providers until they complete construction of projects approved in 2007 and 2008. The following is a summary of these applicants:

Wake County H & R Re – Affiliate has a 2007 project for a 60-bed addition in Mecklenburg County; scope of project changed to now include those 60 beds in the construction of a new 90-bed facility; construction has not yet started

Britthaven – Affiliates have a 2007 approval of a new 120-bed facility in Mecklenburg County with only site work completed to date and recent approvals of two new freestanding facilities in the Raleigh MSA in Wake County (90 beds) and Johnston County (90 beds and located less than two miles from the Wake County line).

UniHealth Post Acute Care – Affiliate approved projects include a 2008 approval for a new 90-bed facility in Union County that is currently only in the land negotiations phase and several out-of-state development projects, some of which are only at the CON review phase. An affiliate also experienced significant delays in development of a new 150-bed facility in Wake County now known as UniHealth Post-Acute Care of Raleigh.

Liberty – Affiliate development projects include two 2007 CON projects in Mecklenburg for construction of two 120-bed replacement facilities. Sites have been acquired, but development on either project has not started to date.

In contrast, affiliates of E.N.W., LLC and BellaRose Nursing and Rehab Center, Inc. have no other projects and are ready to commence with the project as soon as a Certificate of Need is received. Also, Robert Evans, a resident of Wake County, will be primarily responsible for the development of the project while most of the applicants listed above have development staff that is headquartered in other parts of North Carolina or in other states.

#### Site Issues

Given the intensive land planning efforts within the various controlling authorities in Wake County, developing a nursing facility in any geographic area of Wake County is subject to a variety of planning, zoning, and development regulations. From our review, there are a number of applications that do not comply with 10A NCAC 14C.1101(d) and/or 10A NCAC 14C.1101(e) for failure to identify sites and/or failure to demonstrate that the sites are suitable for development of their proposed project. These applicants include:

Project J-8712 Wake County H & R Re – failed to address use-specific standards for nursing home development contained in the Town of Cary Land Development Ordinance.

Project J-8713 Britthaven – the project cannot be developed on the primary site since the primary site is less than 10 acres, and the zoning of the site requires a minimum site size of 10 acres per the Raleigh Code of Ordinance; no information provided for obtaining a Conditional Use Permit.

Project J-8717 AH North Carolina Owner – development of the proposed 90-bed nursing facility on a site already developed with a retirement center will exceed the maximum allowable density limits for the zoning.

Project J-8720 UniHealth Post-Acute Care – Cary – failed to specify which ten acres of a larger parcel will be used for the project; failed to address use-specific standards for nursing home development contained in the Town of Cary Land Development Ordinance; failed to provide information on the procedures for obtaining a Special Use Permit.

Project J-8722 UniHealth Post-Acute Care – North Raleigh – failed to specify which ten acres of a larger parcel will be used for the project for either the primary site or secondary site; did not provide any site preparation cost detail, making it impossible to determine if off-site utilities costs were included for hooking into water and sewer lines that are each at least 1,000 feet

from the primary site; incorrectly identified the appropriate land use classification for nursing homes in the City of Raleigh and based responses on this incorrect information; no information provided on procedures for obtaining a Conditional Use approval for the primary site.

Project J-8723 Liberty Healthcare Properties – Garner – did not provide information on development review procedures in the Town of Garner; did not provide sufficient information on procedures for obtaining a conditional use rezoning and for site plan review.

Project J- 8727 Liberty Healthcare Properties – North Raleigh – incorrectly states that nursing homes are allowable use with a Special Use Permit in the R-4 zoning classification when nursing homes are not permitted in R-4; based responses on this incorrect information and did not provide any discussion of the rezoning that will be required.

Project J-8730 Cary Operations – the project cannot be developed on the site since the project will exceed the maximum density requirements contained in the Town of Cary Land Development Ordinance; failed to address use-specific standards for nursing home development contained in the Town of Cary Land Development Ordinance, which include the density limits.

Project J-8731 Raleigh Operations – site is currently improved with a closed restaurant that would need to be demolished; Phase I Environmental Assessment indicates presence of asbestos-containing materials and also recommends a lead-based paint survey; portion of the site is located on the flood plain.

#### **Medicaid**

Based on the latest available license renewal applications, the average Medicaid utilization for all Wake County nursing facilities is 49.5%. Wake County has a significant number of nursing facility beds that are in CCRCs or that are hospital-based. If only the freestanding nursing facilities are included in the calculation, then the average utilization is higher at 60.5% (please see Page 276 and Page 277 in our application for support for these calculations).

In this competitive review, Medicaid projections should be assessed for reasonableness based on the following factors.

- Current average Medicaid utilization in Wake County's freestanding nursing facilities
- The projected Medicaid utilization for the proposed geographic location
- Each applicant and its affiliates' history of serving the Medicaid population

## **Conclusion**

Based on review of the competing applications for a new facility, the E.N.W., LLC and BellaRose Nursing and Rehab Center, Inc. application should be one of the approvals for a new facility for the following reasons:

1. The project will benefit from a local owner that will oversee all aspects of the project development and operation.
2. The project can be developed on a timely basis since the owners of the co-applicants currently have no other outstanding Certificate of Need projects and are ready to begin project development immediately upon receipt of the Certificate of Need.
3. The project is located in an area of the county with a demonstrated need for more beds.
4. As submitted under separate cover, the project has received substantial community support. Several of these support letters also attest to the owner's level of commitment and involvement in Hillside Nursing Center of Wake Forest.
5. Medicaid utilization is among the highest of the competing applicants and is supported by actual case mix history at Hillside Nursing Center of Wake Forest
6. Nurse staffing levels are among the highest of the competing applicants and are supported by actual nurse staffing history at Hillside Nursing Center of Wake Forest.
7. The primary site is under contract and matters related to rezoning have been thoroughly investigated.
8. There is a demonstrated ability to fund the project costs and working capital costs.
9. Approval of this project still allows for the awarding of 140 beds in other geographic areas of Wake County.

**Project J-8711**  
**Hillcrest Convalescent Center, Inc.**

The following are findings related to access to the proposed project:

- The projected Medicaid case mix of 48.1% is the lowest among the applicants competing for a new facility. Even at this low percentage relative to other competing applicants, the projected Medicaid utilization for this project is not supported by the historical utilization at the applicant's only nursing facility, Hillcrest Convalescent Center in Durham. Utilization data for Hillcrest Convalescent Center from the 2011 license renewal application is attached. The nursing facility beds at Hillcrest served only 13% Medicaid for the FYE September 30, 2010. If the adult care beds are included, the total facility served only 9% Medicaid.
- The applicant intends to certify only 90 of the 120 beds for Medicare and Medicaid; therefore, the maximum combined Medicare and Medicaid case mix that could be served by the facility would be 75%.
- On Page 122, the applicant appears to be proposing to serve Medicare patients that fall into only five of the RUG categories (RHC, RHB, RHA, RMC, RMB), which raises issues concerning access to patients that are in other RUG categories.
- The applicant did not provide discussion of any programs for caring with residents with Alzheimer's disease and other forms of dementia.

The following are findings related to the need for the project:

- There is no evidence that the applicant contacted local healthcare providers regarding nursing facility needs in Wake County.
- The applicant did not provide any bed need analysis by geographic area to support its location selection.

The following are findings on proposed staffing:

- The applicant has projected a licensed nurse staffing ratio of 1.07 hours per patient day, which is the lowest among the applicants competing for a new facility.
- The staffing detail contains one FTE Medical Director at an annual salary of only \$36,000 per year.

**Project J-8711**  
**Hillcrest Convalescent Center, Inc. (continued)**

The application does not include any letter from an area hospital indicating a willingness to enter into a transfer agreement with the proposed facility.

The following items were noted on the financial projections:

- The applicant has projected private pay rates of \$311 per day, which are the highest among the applicants competing for a new facility.
- The health care assessment expense is not correctly calculated. Based on our calculations, the assessment expense at \$12.75 per non-Medicare patient day would be \$380,562 in Year 2. On Page 150, support for the "Other Taxes and Insurance" line item shows a projected total of \$206,968 with the basis for projection being HCC – Durham. The assessment amount is facility specific.
- There are no real estate taxes included in the operating expense projections.
- The weighted average Medicare rate calculations are based on outdated and incorrect rates. On Page 122, the applicant used FYE 2011 unadjusted urban Medicare RUG rates to project the average Part A rate. The rates used are not correct for the Raleigh MSA. In addition, FYE 2012 rates have been reduced for the five RUG categories used by the applicant. For example, the correct FYE 2011 rate for the RHC RUG category is \$481.37. The FYE 2012 rate for this category is \$407.61, a decrease of 15.3%.

The applicant proposes financing 100% of its project costs of roughly \$18,000,000, or \$150,000 per bed, with a commercial loan, which is highly unlikely in today's lending environment. Additionally, the lender letter does not clearly state the amount to be financed.

The applicant is projecting that it will take 20.5 months from the time the footings are poured until the time that construction is complete.

No detail of site preparation costs was provided.



**PART E            PATIENT UTILIZATION DATA**

Answer these questions for the reporting period of October 1, 2009 through September 30, 2010.

**1. Beginning Census, Admissions, Discharges, and Deaths by Level of Care**

- The "Beginning Census" refers to the number of patients/residents in your facility on October 1, 2009.
- "Admissions" refers to the number of persons admitted during the period from Oct 1, 2009 through Sept 30, 2010.
- "Discharges" and "Deaths" refer to all discharges and deaths from October 1, 2009 through September 30, 2010.

**Tips:**

- Your "Beginning Census" plus "Admissions" minus your total "Discharges" plus "Deaths" should be equal to, or less than, your facility's licensed capacity.
- Your totals for "Beginning Census" and for "Admissions" should agree with your totals on "Counties of Patient Origin" for Nursing Care and Adult Care, respectively.

Patients/Residents	Beginning Census	Admissions	Discharges (excluding deaths)	Deaths
(1) Nursing Patients	78	588	544	28
(2) Adult Care Home Residents	33	43	61	6

**2. Inpatient Days of Care**

Number of Days of Inpatient Care rendered during the reporting period.

a. Nursing Care (NC)

(1) NC Days Reimbursed by Medicare	9,073
(2) NC Days Reimbursed by Medicaid	3,442
(3) NC Days Reimbursed by Private Pay	14,424
(4) NC Days Reimbursed by Other	
(5) Total { (1) + (2) + (3) + (4) }	26,939

b. Adult Care Home (ACH)

(1) ACH Days reimbursed by Private Pay	11,486
(2) ACH Days reimbursed by County Special Assistance	
(3) ACH Days reimbursed by Other	
(4) Total { (1) + (2) + (3) }	11,486

**Project J-8712**  
**Wake County H & R Re, Limited Partnership**

The letter of intent does not correctly identify the applicant.

On Page 11, the applicant references a project in Mecklenburg County. The following is relevant findings to this review:

- The project was approved in 2007 as a bed addition to an existing facility and was presented as such in the original application.
- The applicant is now proposing a significant change of scope to this project by proposing to build a new facility that includes the 60 beds originally approved as a bed addition.
- Construction still has not started on the 60 beds that were approved in 2007.

Given the long delays and change of scope of this project, there is doubt on the ability of the applicant to develop the proposed project on a timely basis.

The following are findings on nurse staffing ratios for this application:

- The projected nurse staffing ratio is 3.44 hours per patient day, which is the lowest of all the competing applicants for a new facility.
- Projected licensed nurse staffing is only 1.17 hours per patient day, which is the second lowest of all the competing applicants for a new facility.
- Projected RN staffing is only 0.28 hours per patient day, which is the lowest of all competing applicants for new facility.
- The third shift nurse staffing is very low, with only one RN, one LPN, and five CNAs, which equates to a total of 56 hours of nurse staff time on the third shift for an average census of 112 patients, or only 0.50 nursing hours per patient day for the third shift.

The following are findings on projected private pay rates:

- The private room private pay rate of \$250 is the second highest among the applicants competing for a new facility.
- The semi-private room private pay rate of \$225 is the highest among the applicants competing for a new facility.

**Project J-8712**  
**Wake County H & R Re, Limited Partnership (continued)**

The following are findings on the applicant's sites:

- The applicant does not conform to 10A NCAC 14C.1101(e). The letter on Page 819 and 820 states that nursing homes are permitted by right (subject to certain use-specific standards contained in the Town of Cary Land Development Ordinance). The applicant failed to provide these standards in the application and therefore is out of compliance. Based on our research of the Town of Cary Land Development Ordinance, use specific standards are included in Section 5.2.1 and Section 8.3.2. These standards are attached to the comments on Project J-8730.
- It is also noted that the applicant does not have site control, nor has precisely identified the purchase price of the primary site and secondary site. The broker letters regarding site availability provide a range in price per acre for both the primary site (\$200,000 to \$300,000 per acre) and secondary site (\$135,000 to \$150,000 per acre) rather than providing a specified price. The applicant states that it is in negotiation to purchase the primary site, but it is noted that the letter of intent submitted to the property owner is at \$200,000 per acre, which is the low end of the range quoted in the broker letter. Also, the letter of intent included in the application is not executed by either party.

The applicant has projected a Medicare case mix of 26.8%, which is the highest Medicare case mix among applicants competing for a new facility and is significantly above the average Medicare case mix at existing Wake County nursing facilities.

**Project J-8713  
Britthaven, Inc. (100 Beds)**

This project does not comply with 10A NCAC 14C.1101(e). As described on Page 206, the primary site is zoned Thoroughfare Conditional Use. The primary site is 9.102 acres. If a rest home is located in a Thoroughfare District, the minimum site size is ten acres. The following is an excerpt copied directly from the Raleigh Code of Ordinance, Chapter 2, Article D, Section 10-2072:

**Rest home:**

In the Thoroughfare District the minimum land area required for any *rest home*, or any residential development including a *rest home*, is ten (10) acres. In the Special Residential-30 District, the developments with either three (3) or more *dwelling units* or *equivalent dwelling* on a lot or with a residential density of more than twenty (20) *dwelling units* and *equivalent dwelling units* per net acre shall comply with the standards in §10-2072(b), "Additional *dwelling units* or *equivalent dwelling units* on a lot (three (3) or more) or additional residential density (greater than twenty (20) but not greater than thirty (30) *dwelling units* per net acre), or both, in the Special Residential-30 District."

**Cross reference:** *Equivalent dwelling unit, §10-2073*

This is a "black and white" development standard, and the applicant is clearly out of compliance with this standard. As a result, the project cannot be developed on the primary site. Additionally, the applicant did not provide any information regarding Conditional Use requirements (Regulations for Conditional Use - Article D Section 10.2072) nor any procedures or applications for a obtaining a Conditional Use Permit.

Britthaven already has approval for the following two projects that will serve Wake County residents:

- Project J-8540-10 – Britthaven of Johnston/Clayton – to be located less than two miles from the Wake County line. A map of the location is attached to the comments on Project J-8715.
- Project J-8618-10 - Relocation of 90 beds in Wake County for construction of a new facility in Holly Springs.

It would not make good health planning sense to award a third approved facility in the Raleigh MSA to one provider. In addition, approval of this project would place it well back in the queue of Britthaven projects to be developed in this area and other parts of the state, with a high probability that the beds would not be brought on line in accordance with the aggressive project schedule that projects licensure in October 2013. As evidence for this assertion, please consider Project F-7833-07 in Mecklenburg County, which is a new 120-bed facility approved in 2007. On Page 27, the applicant lists the current status of this project as "Site Work". Inexplicably, the applicant has indicated that this project is only two months delayed, which does not seem possible for a Certificate of Need that has been outstanding for almost four years and is reported to only have site work in progress.

**Project J-8713**  
**Britthaven, Inc. (100 Beds)(continued)**

The applicant's projection of bed need by township does not reconcile to the total projected bed need in Wake County in the 2011 SMFP.

The applicant's projected Medicaid mix of 74% is not supported by income levels in Cedar Fork Township that are provided on Page 93. Cedar Fork Township and neighboring Barton's Creek Township have the two highest per capita and average household income levels in all of Wake County.

The applicant projects an average Medicare rate of \$462, which is the highest weighted average Medicare rate among the competing applicants for new facility. There is no support provided for the rate calculation. It is unclear whether the FY 2012 reduction in Medicare Part A rehab rates was considered in the Medicare rate projections.

This application has the lowest projected total social services cost per patient day (\$1.01) of all the applicants competing for a new facility.

**Project J-8714**  
**Universal Properties/Fuquay Varina, LLC**

This application is for 60 beds. There is no combination of approvals that could include this application and result in the approval of the 240 allocated beds.

The project is located in Holly Springs Township. Based on our bed need analysis, Holly Springs Township is one of only five townships in Wake County that has a projected surplus of beds.

There is a new 90-bed facility approved in Holly Springs Township (Project J-8618-10). Approval of this project would result in a total of 150 approved beds in the township.

**Project J-8715**  
**Britthaven, Inc. (120 Beds)**

Please see the attached maps for the location of this project and the location of Project J-8540-10, which is an approval of a new 90-bed nursing facility in Johnston County. This project is to be located in St. Mary's Township less than two miles from the Johnston County line. Project J-8540-10 is to be located in Johnston County less than two miles from the Wake County line. These two projects are less than four miles from one another. If this project were approved, the same provider would be approved to develop two facilities that would essentially serve the same population. In addition to these two facilities, Britthaven is also approved to develop a new facility in Holly Springs, and currently operates an existing facility in Raleigh (Tower Nursing & Rehabilitation Center).

It would not make good health planning sense to award a third approved facility in the Raleigh MSA to one provider. In addition, approval of this project would place it well back in the queue of Britthaven projects to be developed in this area and other parts of the state, with a high probability that the beds would not be brought on line in accordance with the aggressive project schedule that projects licensure in October 2013. As evidence for this assertion, please consider Project F-7833-07 in Mecklenburg County, which a new 120-bed facility approved in 2007. On Page 27, the applicant lists the current status of this project as "Site Work". Inexplicably, the applicant has indicated that this project is only two months delayed, which does not seem possible for a Certificate of Need that has been outstanding for almost four years and is reported to only have site work in progress.

The applicant's projection of bed need by township does not reconcile to the total projected bed need in Wake County in the 2011 SMFP.

The applicant projects an average Medicare rate of \$462, which is the highest weighted average Medicare rate among the competing applicants for new facility. There is no support provided for the rate calculation. It is unclear whether the FY 2012 reductions in Medicare Part A rehab rates were considered in the Medicare rate projections.

This application has the second lowest projected total social services cost per patient day (\$1.21) of all the applicants competing for a new facility.

The applicant does not have site control and has selected two sites in the same industrial park. Currently, the existing uses in an around the park include industrial uses and a car dealership. An industrial park is an undesirable location for a nursing facility, and this particular location has risks regarding the development of surrounding properties into uses incompatible with a nursing facility.

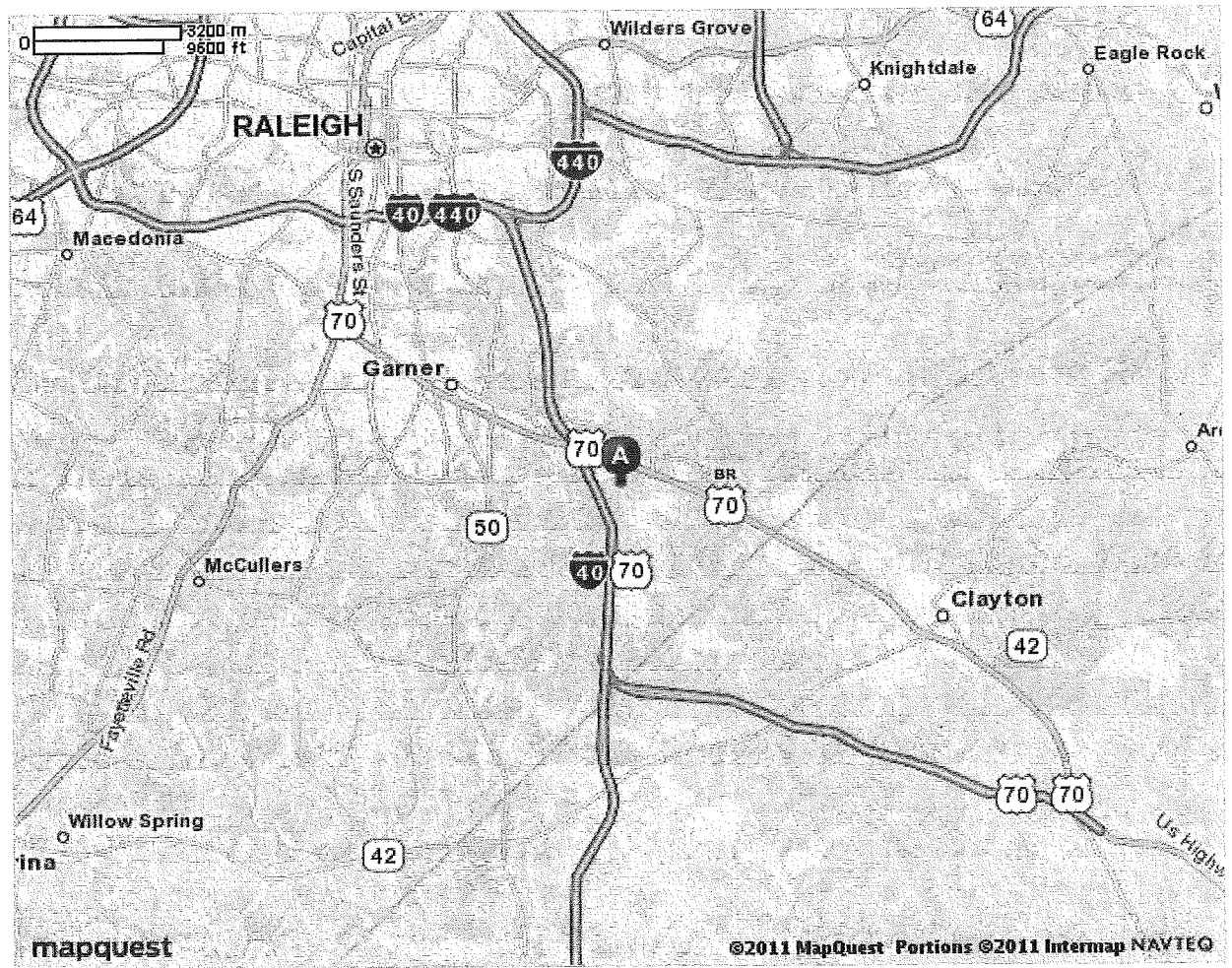


# MAPQUEST

Map of [1003-4099] S Greenfield Pkwy  
Garner, NC 27529

### Notes

Proposed Location  
Britthaven St. Mary's Health & Rehab Center  
Wake County Project J-8715



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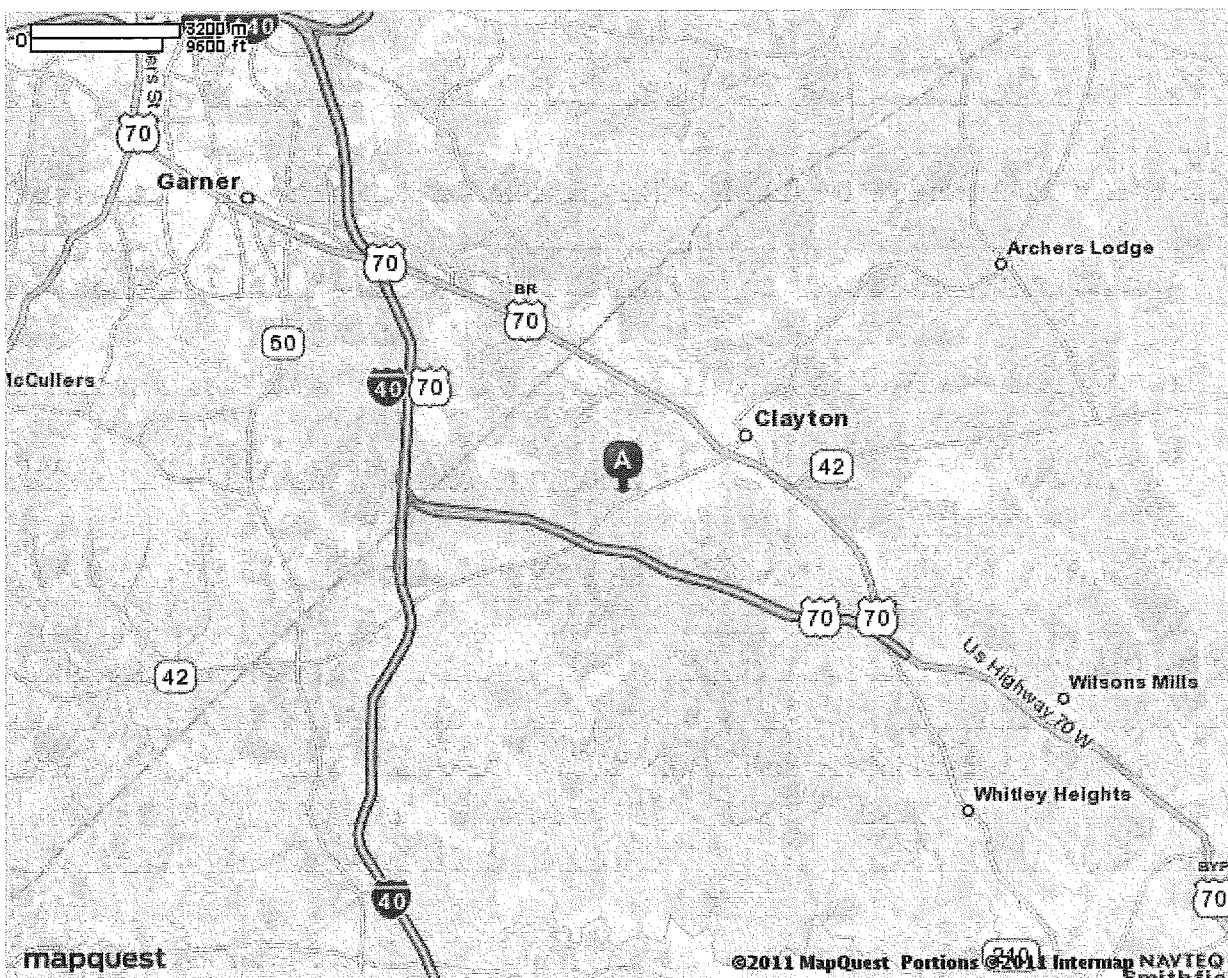


# MAPQUEST

Map of 1795 Amelia Church Rd  
Clayton, NC 27520-6765

### Notes

Location of Britthaven of Johnston/Clayton  
Approved Project J-8540-10



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**Project J-8717**  
**AH North Carolina Owner, LLC**

This project does not comply with 10A NCAC 14C.1101(e). The applicant owns the site, and for this reason only assumed that the proposed project could be built on the site. The applicant failed to consider density restrictions for the zoning on the site, and these restrictions would prevent the nursing facility from being approved on the site by the Planning Commission. The following is a summary of this finding:

- The applicant contends that its site is 8.25 acres, which appears to be a combination of one large site and one small site.
- As highlighted on the attached excerpt from the City of Raleigh Zoning Handbook, O&I-1 density limits for residential uses is 15 units per acre; or 15 to 25 units per acre with approval by the Planning Commission.
- Currently, the site is improved with 219 senior apartments at The Heritage.
- The proposed project is 90 nursing facility beds. For nursing facility density, the City of Raleigh uses ½ of the bed total for equivalent dwelling units. In other words, the 90 beds would equate to 45 dwelling units.
- Combined, the existing facility plus the nursing facility would have 264 dwelling units (219 plus 45). Based on an 8.25 acre site, the density of the project with the construction of the proposed nursing facility would be 32 units per acre, which exceeds the maximum allowable density of 25 units per acre for O&I-1 zoning.
- The application is silent on density issues and also does not provide any procedures for going before the Planning Commission to address these issues.

The applicant and its affiliates have very limited experience in operating nursing facilities in the State of North Carolina and operates only one small nursing facility unit (42 beds) within a CCRC in Charlotte (Carriage Club of Charlotte).

There is no combination of bed approvals that would include approval of this project that would result in the approval of the 240 allocated beds.

**Project J-8717**  
**AH North Carolina Owner, LLC (continued)**

The following are findings regarding projected case mix:

- In Table VI.3, the applicant indicates the project is 55.4% Medicaid. Based on our calculation from information provided on Table IV.3, the actual Medicaid mix is 51.9%. In addition, Brookdale has no history of providing care to Medicaid beneficiaries in North Carolina nursing facilities. The nursing facility beds at Carriage Club of Charlotte have 0% Medicaid utilization (see the attached excerpt from the 2011 license renewal application).
- The applicant's combined Medicare and Medicaid utilization is 73.5%, which is the lowest among the competing applicants for a new facility.

The following are findings regarding the financial projections:

- The applicant has projected a total of \$9,479,583 in revenue for a 90-bed nursing facility, which equates to an average of \$309 per patient day, which is the highest of any applicant for a new facility. The next highest average revenue per patient day among applicants for a new facility is \$281 (Hillcrest Project J-8711).
- Projected revenues include \$2,627,231 in ancillary revenue over and above the Medicare Part A revenue with no support provided for the ancillary revenue projections. Projected ancillary revenue is \$85.72 per patient day. The feasibility of the project is entirely dependent upon these unrealistically high and unsupported ancillary revenue projections.
- Based on information provided on Page 132, the Medicare rate projections do not reflect the proposed decreases for rehab RUG rates for FYE 2012 and are based on current rates.
- The financial projections do not include any interest expense since the project is to be funded with related party equity.
- Financial projections do not include any expense amount for non-reimbursable items.

**Project J-8717**  
**AH North Carolina Owner, LLC (continued)**

The following are findings related to facility staffing:

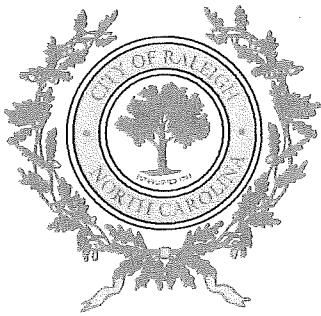
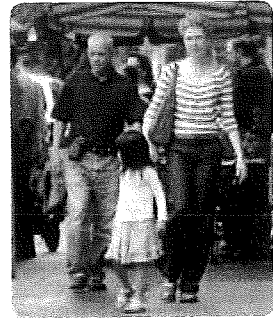
- The applicant is the only applicant for a new facility that is not proposing 24-hour RN coverage. Both the second and third shift RN staff includes only 0.60 RN staffing. Overall, the applicant is projecting only 0.29 RN hours per patient day, which is the second lowest among the applicants competing for a new facility.
- Projected staffing does not include a Staff Development Coordinator.

The following are findings related to project cost and design:

- The proposed project cost is \$232,900 per bed, which is the highest per bed cost among the applicants for a new facility and is over \$80,000 per bed higher than the next highest project cost per bed.
- The proposed project design is a three-story design.



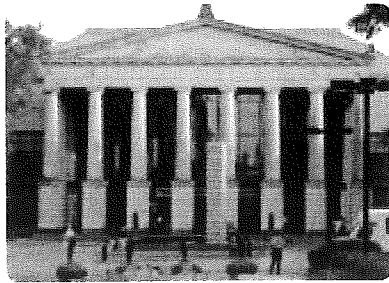
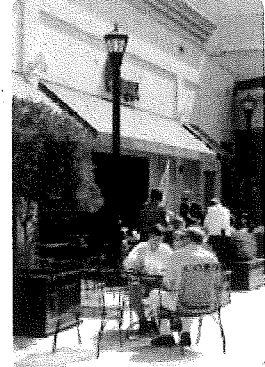
Photos (left and below):  
Courtesy of Raleigh Historic Districts Commission



# Raleigh Zoning Handbook

CITY OF RALEIGH, NORTH CAROLINA  
DEPARTMENT OF CITY PLANNING

JULY, 2009



Courtesy of Raleigh Historic Districts Commission

# O&I-1

This *mixed-use* district is intended for office and institutional use. Suburban office parks and *medium to high density residential* uses are typical of this district. Various aspects of building intensity are regulated.

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<b>Residential Density:</b>	15 dwelling units per acre, 15-25 units per acre with approval by the Planning Commission	
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<b>Minimum Lot Requirements: (Residential uses)</b>	Lot Area	5,000 square feet
	Lot Width	45 feet
	Corner Lot Width	60 feet
	Lot Depth	70 feet

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<b>Minimum Lot Requirements: (Non-residential uses)</b>	No minimum lot area requirements for nonresidential uses	
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<b>Minimum Setback Requirements: (Non-residential uses)</b>	Front Yard	30 feet
	Side Yard	5 feet
	Corner Lot Side Yard	5 feet
	Rear Yard	5 feet
	Aggregate Front/Rear	20 feet

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<b>Minimum Setback Requirements: (Residential uses)</b>	Front Yard	10 feet for block faces platted after Oct. 3, 1989 20 feet for block faces platted before Oct. 3, 1989
	Side Yard	5 feet
	Aggregate side yards	10 feet
	Corner Lot Side Yard	20 feet
	Rear Yard	20 feet

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<b>Maximum Height:</b>	Determined by lot depth and building setback. Maximum setback height is 40 feet. Please see illustration on page 102.	
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<b>Allowable Ground Sign: (freestanding sign)</b>	<i>Low profile sign</i>	
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<b>Common Uses:</b>	<i>Multifamily and group housing developments</i> <i>Office buildings (maximum 0.75 floor/area ratio)</i> <i>Congregate care facilities and rest homes</i> Banks, health clubs Hospital Funeral homes Parking lots	
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<b>Other allowable uses include but are not limited to:</b>	<i>Single family residences and cluster unit development (for tracts greater than 10 acres in size)</i> <i>Residential institutions (school, day care, place of worship, fire station)</i> Beauty shops Veterinary hospital Parks, libraries, museums Public water and sewage treatment plan	
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<b>Allowable uses requiring a special use permit:</b>	Bed & breakfast inn Rooming house Specialized manufacturing Governmental prison Outdoor theater with more than 250 seats	
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**PART E**                      **PATIENT UTILIZATION DATA**

Answer these questions for the reporting period of October 1, 2009 through September 30, 2010.

**1. Beginning Census, Admissions, Discharges, and Deaths by Level of Care**

- The "Beginning Census" refers to the number of patients/residents in your facility on October 1, 2009.
- "Admissions" refers to the number of persons admitted during the period from Oct 1, 2009 through Sept 30, 2010.
- "Discharges" and "Deaths" refer to all discharges and deaths from October 1, 2009 through September 30, 2010.

**Tips:**

- Your "Beginning Census" plus "Admissions" minus your total "Discharges" plus "Deaths" should be equal to, or less than, your facility's licensed capacity.
- Your totals for "Beginning Census" and for "Admissions" should agree with your totals on "Counties of Patient Origin" for Nursing Care and Adult Care, respectively.

Patients/Residents	Beginning Census	Admissions	Discharges (excluding deaths)	Deaths
(1) Nursing Patients	29	139	114	21
(2) Adult Care-Home Residents	2	6	5	2

**2. Inpatient Days of Care**

Number of Days of Inpatient Care rendered during the reporting period.

**a. Nursing Care (NC)**

(1) NC Days Reimbursed by Medicare	2037
(2) NC Days Reimbursed by Medicaid	0
(3) NC Days Reimbursed by Private Pay	8438
(4) NC Days Reimbursed by Other	HMO 200
(5) Total { (1) + (2) + (3) + (4) }	10,675

**b. Adult Care Home (ACH)**

(1) ACH Days reimbursed by Private Pay	608
(2) ACH Days reimbursed by County Special Assistance	0
(3) ACH Days reimbursed by Other	0
(4) Total { (1) + (2) + (3) }	608

**Project J-8720**  
**UniHealth Post-Acute Care – Cary, LLC (100 Beds)**

Given a history of project delays and a number of other CON development projects in North Carolina and other states, there is a high degree of doubt that the applicant could develop the proposed project in accordance with its project timetable for the following reasons:

- This project would be placed in a queue behind the other development projects listed on Page 38 and Page 39.
- The development projects include a project approved from 2008 in Union County. Construction has not yet begun on a project that has been approved for approximately three years and the property is currently only in the land negotiations phase.
- An affiliate of this applicant was approved for a 150-bed project in Wake County (UniHealth Post-Acute Care of Raleigh) in early 2000 (Project J-6096-99). This project experienced long development delays and did not open until early 2006.

The applicant is out of compliance with 10A NCAC 14C.1101(d) and 10A NCAC 14C.1101(e) for the following reasons:

- There is inconsistency in the acreage under consideration. On Page 24.09, the acreage is 24.09 acres. On Page 1744, the acreage is 19.02 acres. On Page 2101, the acreage is 17.866 acres.
- On the capital cost budget, the applicant indicates that ten acres of the total parcel will be used for the project. The portion of the total parcel that will be used for the project has not been identified. 10A NCAC 14C.1101(d) requires that the applicant specifies a site on which the facility will be located.
- The applicant failed to address special use standards for nursing homes and is therefore out of compliance. Based on our research of the Town of Morrisville Zoning Ordinance, use specific standards are included in Article VII Section 2.8 of the zoning ordinance and are attached.
- Information in the application indicates that a Special Use Permit will be required, and procedures for obtaining a Special Use Permit were not included in the application. Approval procedures for a Special Use Permit from the Town of Morrisville Zoning Ordinance are attached.



**Project J-8720**

**UniHealth Post-Acute Care – Cary, LLC (100 Beds) (continued)**

As presented in Form B, the project is projected to be only marginally feasible with only \$41,096 of net income in the second year of operations. The following must be considered in evaluating the financial feasibility of the project:

- Revenue projections include \$87,658 in income from additional charges from private rooms. This income is over and above the private pay room charges for private rooms. No other unaffiliated applicant has projected this income item. Without this income item, the project will operate at a loss.
- Facility staff does not include the following staff positions:
  - Admissions Coordinator
  - Staff Development Coordinator
  - Laundry Supervisor
  - Housekeeping Supervisor
- The dietary department staff only includes 2.0 FTE cooks. No other applicant for a new facility projects this low a number of cooks on staff. The next lowest projected number of cooks among applicants for a new 100-bed facility was 2.63 FTE cooks.
- Total projected general and administrative salaries expense is only \$165,439. The next lowest projected general and administrative salaries expense among applicant for a new 100-bed facility was \$209,000. The applicant is proposing only 3.0 FTE general and administrative staff. No other applicant for a new facility proposed less than 4.0 FTE general and administrative staff
- There is no support for the projected weighted average Medicare rate of \$458, which is the second highest projected Medicare rate among the applicants competing for a new facility.
- There is no bad debt expense
- There is no projected expense for non-reimbursable items, such as prescription or legend drugs

**Project J-8720**

**UniHealth Post-Acute Care – Cary, LLC (100 Beds) (continued)**

The following is noted regarding projected private pay rates:

- The projected semi-private room private pay rate is not applicable for any comparative review since there are no private pay residents in semi-private rooms.
- The projected private pay private room rate is \$188 is not supported by private pay rates of affiliated nursing facilities in Wake County. Based on the license renewal application, the actual private pay private room rate at UniHealth Post-Acute Care of Raleigh was \$237 and the private pay private room rate at The Oaks at Mayview was \$239 in 2010. These rates are likely even higher currently.
- The projected private pay rate of \$188 is less than the direct costs plus indirect costs less ancillary costs per patient day in Year 2, which is calculated at \$199.24.

The projected Medicaid percentage of 64.6% is not supported by operating experience of affiliates of the applicant in Wake County. Based on the latest license renewal applications, UniHealth Post-Acute Care of Raleigh had 38.7% Medicaid utilization and Oaks at Mayview had 14.9% Medicaid utilization for FYE September 30, 2010.

It is noted that on Page 137, St. Mary's Township has the highest bed need (100 beds) of any township in Wake County based on the applicant's need analysis after adjusting for nursing facility beds in CCRCs.

Please note that the information provided on Page 1231 for a Memory Support Unit is not applicable for this application since no such unit is proposed.

## Article VII. Special Use Permit Findings

### Section 1. GENERAL FINDINGS

The following findings, based on evidence and testimony received at a public hearing in accordance with procedures specified in this Ordinance, must be made by the Board of Adjustment or Town Board in order to approve any special use permit:

- A. That the proposed development or use will not materially endanger the public health or safety;
- B. That the proposed development or use will not substantially injure the value of adjoining property;
- C. That the proposed development or use will be in harmony with the scale, bulk, coverage, density, and character of the neighborhood in which it is located;
- D. That the proposed development or use will generally conform with the Comprehensive plan and other official plans adopted by the Town;
- E. That the proposed development or use is appropriately located with respect to transportation facilities, water and sewer supply, fire and police protection, and similar facilities;
- F. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

### Section 2. ADDITIONAL FINDINGS FOR CERTAIN SPECIAL USES

#### 2.1 Adult Establishment

- A. May not be located within one thousand (1,000) feet of the following uses:
  - (i) Place of worship
  - (ii) School, public or private
  - (iii) Public Park
  - (iv) Property developed for residential use
  - (v) Property in a residential zoning district
  - (vi) Establishment with an on-premise North Carolina ABC license
  - (vii) Library
  - (viii) Day care center
- B. There may be no more than one such establishment on the same property, or in the same building.
- C. No other principal use or accessory use may occupy the same property or building as the adult establishment.
- D. Except for ground and fascia signs permitted in Part C, Article XI of this Ordinance, there shall be no other advertisements, displays, signs or promotional materials visible to the public from streets or sidewalks.
- E. The minimum straight line distance between the property lines of two adult establishments shall be 2,000 feet. No two adult establishments shall be located within the same building.
- F. Measurements for the provisions above shall be made from the property line of the proposed adult establishment to the property line of zoning district line as noted above, and from the property line of any separate parking lots used for the adult establishment.

(Amended 12/19/06, Ord #2006-137)

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★ **2.8 Nursing Home**

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- A. Primary structures are located at least one hundred (100) feet from any public street right-of-way.
- B. In non-residential zoning districts, equivalent residential density shall not exceed eight (8) dwelling units per acre.
- C. A minimum of 15% of the land area (excluding public and private streets and parking areas) shall be designated as open space for enjoyment and use or viewing by the residents. Said open space must be safe, easily accessible, and visible from major indoor activity areas and/or patient rooms and provide active or passive recreation opportunities.

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**2.9 Service Station**

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- A. Area used to store vehicles awaiting repair or pick-up must be screened.
- B. All repairs must be performed inside a building.
- C. Vehicles may not be parked or stored for more than thirty (30) consecutive days.
- D. Parking or storage of vehicles for parts, as in a junkyard, is not permitted.
- E. Canopies shall be located at least twenty-five (25) feet from any street right-of-way or property line.

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**2.10 Telecommunication Towers**

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- A. Communications towers and associated equipment, which are totally concealed within a building or structure so that they are architecturally indiscernible, shall not be considered towers for transmitting and receiving electronic signals. They are permitted in all zoning districts, but are subject to site plan approval by the Town Board.
- B. Communications towers shall not interfere with normal radio and television reception in the vicinity. Commercial messages shall not be displayed on any tower.
- C. Lighting shall not exceed the Federal Aviation Administration (FAA) minimum if the FAA requires lighting. Prior to the issuance of a building permit, the applicant shall be required to submit documentation from the FAA that the lighting is the minimum lighting required by the FAA.
- D. Towers shall be constructed and maintained in conformance with all applicable building code requirements.
- E. In order to protect the public from unnecessary exposure to electromagnetic radiation, the tower owner shall provide documentation indicating that the power output levels do not exceed federally approved levels or American National Standards Institute (ANSI) standards, whichever provides the stricter requirement.
- F. Towers exceeding two hundred (200) feet in height may not locate within the Town of Morrisville's jurisdiction, and all towers must be a monopole design.
- G. If the top of the tower is thirty (30) feet high or less, the normal setbacks of the zoning district for structures shall apply.
- H. Towers located on top of structures (with the exception of concealed towers) tower shall not be more than thirty (30) percent of the building height above the building, or seventy-five (75) feet above the building, whichever is less. The building or structure shall maintain the normal setbacks of the zoning district.

(Amended 03/23/2010, ORD#2010-002)  
(Amended 04/28/2009, ORD#2009-001)  
(Amended 02/22/2011, ORD#2011-014)  
(Amended 03/22/2011, ORD#2011-006)

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## **Section 2. SPECIAL USE PERMIT**

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### **2.1 Application**

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- A. Applicable fees
- B. Five copies of the completed application form
- C. Site Plan: All site plans shall comply with the current published Morrisville Planning Department Site Plan Requirements and Check List (Submittal Procedure) on the Planning Department website, which is incorporated herein by reference.
- D. Three copies of traffic impact study.
- E. Written description of project and characteristics such as hours of operation. Summary of evidence to be presented by applicant to applicable Board in support of findings required in Part C, Article VII of this ordinance.
- F. Two (2) sets of stamps and mailing labels addressed for owners of all property within five hundred (500) feet of the property associated with the application and owners of the subject property.

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### **2.2 Accepted for Review**

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The Planning Department shall make a formal determination as to whether each application for a proposed special use permit with the required site plan is complete and eligible to begin the required review process.

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### **2.3 Review of Special Use Permit by Staff**

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The staff shall prepare a written analysis of the special use site plan based on review by planning and engineering, fire department, inspections department, and other entities or agencies as deemed appropriate. The review shall be based on compliance with the provisions of this ordinance and any other applicable local or state law. The plan shall be forwarded to the Planning Board for consideration at a regular meeting.

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### **2.4 Planning Board Recommendation Required (SUP-C) only**

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The planning board, after receiving the analysis from the town staff shall review the special use site plan and forward a recommendation of findings to the Town Board. The planning board recommendation may be to approve, approve with conditions, or deny the request. The planning board recommendation shall be based on compliance with specific standards of this ordinance and conditions applicable to the proposed special use as specified above. A public comment session shall be held before the Planning Board per the procedures as identified in Part D, Article II, Section 5.3 and Section 5.5 of this ordinance.

## **2.5 Public Hearing Required**

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A public hearing shall be held before the Town Board (SUP-C) or Board of Adjustment (SUP-A) The time, date and place of the hearing and a description of the proposed special use shall be advertised as follows:

**A. Publication**

Notice of all hearings to consider special uses shall be given in a local newspaper not less than seven (7) days prior to the date of the hearing.

**B. Written Notice to Property Owners**

At least seven (7) days prior to the date of the hearing, the town shall provide all owners of property located within five hundred (500) feet of the subject property written notice of the hearing by first class mail. For this purpose, property owners shall be determined by use of Wake County or Town of Morrisville tax records, and the seven-day period shall begin on the date of mailing.

At the public hearing the applicant shall establish by competent sworn testimony that the proposed special use meets the requirements of this ordinance and shall testify as to all those matters stated in the application.

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## **2.6 Board Decision**

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After the public hearing, the Town Board or Board of Adjustment shall approve, approve with conditions, deny, or take any other action consistent with its rules of procedure on the special use permit. The special use permit may be approved only if positive findings are made by the applicable board on each condition and applicable to the proposed use as specified above. Findings of the board shall be based on evidence submitted during the public hearing.

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## **2.7 Approval Period**

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If the approved use is not exercised or consummated within the time limit set by the applicable board or within one (1) year if no such time limit was established, then the permit shall be null and void. "Exercised and consummated," as set forth in this section, shall mean that binding contracts have been set for the construction of the principle structures; or in the absence of contracts that the principal structure is under construction to a substantial degree; or the prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed. When construction is not a part of the use, "exercised and consummated" shall mean that the use is in operation in compliance with the conditions set forth in this permit.

## **2.8 One-Year Extension**

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The validity of a special use permit approval shall be extended for one (1) year by the Planning Director if the site plan for the special use permit meets all of the following conditions and requirements:

- A. The special use permit was approved under the provisions in Part D, Article II, Section 1 of the Town of Morrisville Zoning Ordinance.
- B. The approval of the special use permit was valid on December 31, 2010.
- C. No state legislation has been passed after December 31, 2010 and prior to approval of the one-year extension for the project that would have the effect of further tolling or extending the approval period for the project.
- D. A complete site plan application for the project is submitted to the Planning Department and is accepted for review no later than one hundred and eighty (180) days after the date that the existing project approval is currently scheduled to expire, as listed in the current Permit Extension Project List maintained by the Planning Department.
- E. The site plan complies with the review and approval procedures listed in Subsections 1.1 through 1.3 of Part D, Article II, Section 1 of this ordinance.
- F. No new plan review fees shall be charged for the review associated with such approval, except for transportation peer review fees and other out-of-pocket costs incurred by the Town that are necessary as part of the review. In addition, the Town shall charge the appropriate fee in the adopted Fee Schedule if more than three reviews are needed to bring the project into compliance with the Town ordinances.
- G. The site plan meets all applicable site plan requirements of the *Town of Morrisville Zoning Ordinance* and other applicable Town ordinances that are in effect at the time the extension is formally approved.
- H. An updated Traffic Impact Analysis (TIA) shall be prepared for the project shown in the site plan if the existing TIA is more than three (3) years old and the Planning Director determines that a potential road capacity or safety issue would be created by the project.
- I. If the Planning Director determines that the site plan has met the applicable requirements referenced in this subsection, then he or she shall administratively approve a one-year extension of the approval period for the special use permit. This one-year period shall start on the date the special use permit is currently scheduled to expire, as listed in the current Permit Extension Project List maintained by the Planning Department.

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## **2.9 Conditions of Approval**

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If the conditions of a special use have not been or are not being complied with, the town manager shall give the permittee notice of intention to revoke such permit at least ten (10) days prior to a Town Board review thereon. After conclusion of the review, the Town Board may revoke such permit. Furthermore, failure to comply with conditions attached to a special use shall be deemed a violation of this ordinance, and shall be punishable, as provided in Part D Article III.

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## **2.10 Recording of Approved Special Uses**

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Upon expiration of the appeal period, a copy of the signed resolution approving the special use shall be recorded with Wake County Register of Deeds.

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## **2.11 Appeal**

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Any appeal of the Town Board or Board of Adjustment shall be to the Superior Court of Wake County. Any such petition to Superior Court shall be filed with the Court Clerk no later than thirty (30) days after the date of decision by the Town Board or Board of Adjustment or after the date a written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Town Board or Board of Adjustment at the public hearing for the case, whichever is later. The copy of the decision shall be delivered to the aggrieved party either by personal delivery or by registered or certified mail, return receipt requested.

*(Amended 4/28/2009, ORD#2009-001)*

*(Amended 02/22/2011, ORD#2011-014)*

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## **Section 3. VARIANCE**

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### **3.1 Application**

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- A. Applicable fees
- B. Five copies of completed application form
- C. Plot Plan (Scale drawing showing property lines, structures and other features as necessary to describe request)
- D. Summary of evidence to be presented by applicant to Board of Adjustment in support of the following findings and any additional findings that may be required for the specific use:
  - (i) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district.
  - (ii) That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.
  - (iii) That the special conditions and circumstances do not result from the actions of the applicant.
  - (iv) That granting the variances requested would not confer on the applicant any special privilege that is denied by this ordinance to other land, structures, or buildings in the same district.
  - (v) That the variance, if granted, would be consistent with the spirit of the Ordinance and the overall public welfare.
- E. One (1) set of stamps and mailing labels addressed for owners of all property within five hundred (500) feet of the subject property.

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### **3.2 Accepted for Review**

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- A. The Planning Department shall make a formal determination as to whether each application for a proposed variance is complete and eligible to begin the required review process.
- B. A request for a variance of the allowable use of the property is prohibited, and will not be accepted for review.

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### **3.3 Review of Variance Request by Staff**

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**Project J-8722**  
**UniHealth Post-Acute Care – North Raleigh, LLC (120 Beds)**

Given a history of project delays and a number of other CON development projects in North Carolina and other states, there is a high degree of doubt that the applicant could develop the proposed project in accordance with its project timetable for the following reasons:

- This project would be placed in a queue behind the other development projects listed on Page 38 and Page 39.
- The development projects include a project approved from 2008 in Union County. Construction has not yet begun on a project that has been approved for approximately three years and the property is currently only in the land negotiations phase.
- An affiliate of this applicant was approved for a 150-bed project in Wake County (UniHealth Post-Acute Care of Raleigh) in early 2000 (Project J-6096-99). This project experienced long development delays and did not open until early 2006.

The applicant has identified a primary site in Cedar Fork Township and a secondary site in Leesville Township.

The applicant is out of compliance with 10A NCAC 14C.1101(d) and 10A NCAC 14C.1101(e) for the following reasons:

- On the capital cost budget, the applicant indicates that ten acres of the total parcel will be used for the project. The primary site has a total of 30.72 acres. The portion of the total parcel that will be used for the project has not been identified. 10A NCAC 14C.1101(d) requires that the applicant specifies a site on which the facility will be located.
- Based on the information on Page 253, water is located 1,200 feet from the primary site and sewer is located 1,000 feet from the primary site. The letter on Page 2169 incorrectly states that water and sewer is available to the site. The applicant also incorrectly states on Page 253 that: "The site is currently serviced by water and sewer", but then goes on to state that: "Adequate costs to connect the proposed site to water and sewer service is included in the capital expenditure budget. No detail of site preparation costs has been provided, so there is no way to verify that the "adequate costs" referenced above are included in the capital cost budget.
- In discussions of zoning, the applicant incorrectly identifies that a nursing home use would fall under the Life Care Community classification. Nursing homes fall under the Rest Home classification for City of Raleigh planning and zoning. As a result, all information provide regarding rezoning and a Life Care Community land use is incorrect for the proposed project.

**Project J-8722**

**UniHealth Post-Acute Care – North Raleigh, LLC (120 Beds) (continued)**

- The primary site is zoned Thoroughfare District Conditional Use. The applicant did not provide any information on the procedures for obtaining a Conditional Use approval for the proposed nursing facility use.
- On the capital cost budget, the applicant indicates that ten acres of the total parcel will be used for the project. The secondary site has a total of 13.49 acres. The portion of the total secondary parcel that will be used for the project has not been identified.

As presented in Form B, the project is projected to be only marginally feasible with only \$37,592 of net income in the second year of operations. The following must be considered in evaluating the financial feasibility of the project:

- Revenue projections include \$103,651 in income from additional charges from private rooms. This income is over and above the private pay room charges for private rooms. No other unaffiliated applicant has projected this income item. Without this income item, the project will operate at a loss.
- Facility staff does not include the following staff positions:
  - Admissions Coordinator
  - Staff Development Coordinator
  - Laundry Supervisor
  - Housekeeping Supervisor
- The dietary department staff only includes 2.0 FTE cooks. No other applicant for a new facility projects this low a number of cooks on staff. The next lowest projected number of cooks among applicants for a new 120-bed facility was 2.63 FTE cooks.
- Total projected general and administrative salaries expense is only \$165,439. The next lowest projected general and administrative salaries expense among applicant for a new 120-bed facility was \$225,000. The applicant is proposing only 3.0 FTE general and administrative staff. No other applicant for a new facility proposed less than 4.0 FTE general and administrative staff.
- There is no support for the projected weighted average Medicare rate of \$458, which is the second highest projected Medicare rate among the applicants competing for a new facility.
- There is no bad debt expense
- There is no projected expense for non-reimbursable items, such as prescription or legend drugs

**Project J-8722**

**UniHealth Post-Acute Care – North Raleigh, LLC (120 Beds) (continued)**

The following is noted regarding projected private pay rates:

- The projected semi-private room private pay rate is not applicable for any comparative review since there are no private pay residents in semi-private rooms.
- The projected private pay private room rate is \$188 is not supported by private pay rates of affiliated nursing facilities in Wake County. Based on the license renewal application, the actual private pay private room rate at UniHealth Post-Acute Care of Raleigh was \$237 and the private pay private room rate at The Oaks at Mayview was \$239 in 2010. These rates are likely even higher currently.
- The projected private pay rate of \$188 is less than the direct costs plus indirect costs less ancillary costs per patient day in Year 2, which is calculated at \$201.48 for the long term care beds. This comparison is not applicable for the memory care unit since it is projected to be 100% Medicaid.

The projected Medicaid percentage of 64.3% is not supported by operating experience of affiliates of the applicant in Wake County. Based on the latest license renewal applications, UniHealth Post-Acute Care of Raleigh had 38.7% Medicaid utilization and Oaks at Mayview had 14.9% Medicaid utilization for FYE September 30, 2010.

For the proposed memory care unit, there is no access to any non-Medicaid resident since the unit is projected to be 100% Medicaid.

It is noted that on Page 140, St. Mary's Township has the highest bed need (100 beds) of any township in Wake County based on the applicant's need analysis after adjusting for nursing facility beds in CCRCs.

**Project J-8723**

**Liberty Healthcare Properties of W. Wake County, LLC – Garner Project**

The applicant did not demonstrate the ability to finance the proposed project. Total capital costs of \$14,719,180 and total working capital costs of \$1,600,432 are all to be financed via equity of the two owners of the applicant. The grand total to be financed from owner capital reserves is \$ 16,319,592. There is insufficient documentation provided on the owners' ability to fund a capital commitment that amounts to 100% of all funding required for this project. The documentation provided in the application includes only a letter from the owners committing funds to the project and a letter from a CPA in lieu of personal financial statements. To demonstrate the ability of individuals to contribute funds committed, personal financial statements are required and identification of the line items on the personal financial statements from which the funds will be made available is also required. Also, given the current environment with low mortgage interest rates, the only conceivable reason that the applicant proposed no mortgage funding is to attempt to gain some advantage on comparative review of financial projections.

Liberty entities have filed three applications. Each of these applications involves 120 new beds plus a relocation of 10 beds from Capital Nursing and Rehabilitation Center. As proposed, only one of these three applications could be approved since each proposes the relocation of the same beds from Capital Nursing and Rehabilitation Center. It is also noted that project support letters included in each of the applications are not specific to one particular project.

For each of the three Liberty applications, all of the sites selected do not currently have water and sewer service availability to the site.

Given a history of project delays and other CON development projects in North Carolina and other states, there is a high degree of doubt that the applicant could develop the proposed project in accordance with its project timetable for the following reasons:

- This project would be placed in a queue behind the other development projects listed on Page 21.
- The development projects include two CON projects in Mecklenburg County with 2007 application dates. Construction has not yet begun on either of these projects, and they have been approved for over three years. The applicant has indicated "N/A" for delays, which is not possible given the approval dates of these projects. From the information presented, sites have been acquired for these two projects, but no development has occurred to date.

**Project J-8723**

**Liberty Healthcare Properties of W. Wake County, LLC – Garner Project (continued)**

The applicant does not comply with 10A NCAC 14C.1101(e) for the following reasons:

- On Page 128, the applicant indicates that the site would need a conditional use permit and rezoning to O&I, which is also confirmed in a letter from the Town of Garner on Page 512.
- No documentation was provided on the development review procedures and procedures for conditional use district rezoning. Please see the attached procedures for the Town of Garner Unified Development Ordinance.
- No conditional use rezoning application was included in the application. Please see the attached application from the Town of Garner.
- No site plan review application was included in the application. Please see the attached application from the Town of Garner.

On Page 132, private and semi-private room sizes are only 199 square feet, which are the lowest among all the applicants for a new facility.

Of all the applicants for a new facility, Liberty proposes the lowest raw food cost at \$5.00 per patient day.

The projected semi-private room private pay rate of \$170 is less than the direct costs plus indirect costs less ancillary costs per patient day in Year 2, which is calculated at \$188.33.

**3.12. Official zoning map amendment (rezoning).**

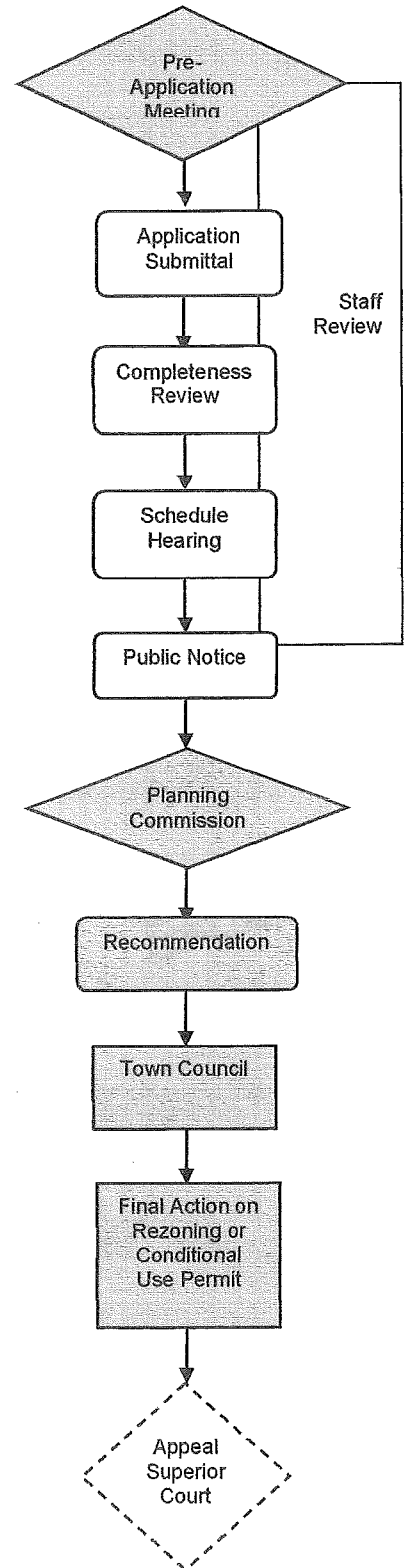
A. **General.** Amendments to the official zoning map of the Town of Garner shall be made in accordance with the provisions of paragraph C., below. If, for any reasons, any condition imposed pursuant to these regulations is found to be illegal or invalid such condition shall be null and void and of no effect and proceedings shall be instituted to rezone the property to its previous zoning classification.

B. **Initiation of official zoning map amendment.**

1. Whenever a request to amend the official zoning map is initiated by the Town Council, the Planning Commission or the Town administration, the administration shall draft an appropriate ordinance and present it to the Town Council for consideration of whether or not to set a public hearing to review the ordinance. This does not preclude the Town Council from holding public hearings for purposes of gathering information to make such a request.

2. Any person may petition the Town Council to rezone property according to the provisions herein. In cases where the petition has been submitted by someone other than the property owner or a duly authorized agent or representative, said petition shall be forwarded to the Town Council for a Council determination as whether a public hearing will be set to consider the change. The petition shall be filed with the Planning Director and shall include, at a minimum:

- a. The name, address and phone number of the applicant;
- b. A description of the land affected that is sufficient to clearly identify the boundaries of the property to be included within the proposed amendment, as well as a description of the proposed change in zoning districts.
- c. A concise statement of the reasons why the petitioner believes the proposed amendment would be in the public interest; and
- d. Mapping analysis and information required for special use permit



applications.

3. **Conditional use zoning district.** The zoning classification of any particular lot or lots may be changed to a conditional use zoning district classification only if a petition requesting such a change has been submitted by or on behalf of the owner or owners of such lot or lots. Conditional use zoning districts shall follow the procedures in Section 3.13.
  4. **Receipt of official zoning map amendment application.** Upon receipt of a petition for a zoning map amendment (both general use and conditional use zoning district), the Planning Director shall establish a date for a public hearing and the Planning Staff shall schedule and advertise a Public Hearing before the Town Council with the Planning Commission invited to attend.
- C. **Approval process.** Requests to amend the official zoning map shall be processed in accordance with the following requirements:
1. **Application procedure.** Application forms for rezoning requests shall be obtained from the Planning Director. Completed forms, together with an application fee as required by Section 3.1 to cover administrative costs, plus any additional information the applicant feels to be pertinent, shall be filed with the Planning Director. Any communication purporting to be an application for an amendment shall be regarded as a mere notice to seek relief until it is made in the form required. Prior to the submission of an application for an official zoning map amendment, all applicants shall request a preapplication conference in accordance with Section 3.1.B. A traffic impact analysis in accordance with Section 3.5.L may be required by the Planning Director.
  2. **Staff review and report.** The Planning Director shall prepare a staff report that reviews the proposed rezoning request in light of the Comprehensive Growth Plan and the general requirements of this UDO. The report shall include analysis regarding the reasonableness of the proposed rezoning. A copy shall be provided to the Planning Commission, Town Council and the applicant before the scheduled public hearing.
  3. **Public hearing.**
    - a. **Public hearing required.** No map amendment may be adopted until a public hearing has been held by the Town Council on the request with the Planning Commission invited to attend.
    - b. **Planning Commission review.** After the public hearing on a proposed map amendment has been closed by the Town Council, the matter shall be automatically referred to the Planning Commission for review and recommendation.
  4. **Planning Commission recommendation.**
    - a. The Planning Commission shall review all proposed rezoning requests and forward a written recommendation to the Town

- Council for its consideration. The Planning Commission's recommendation shall include a comment on whether a proposed zoning map amendment is consistent with the adopted Comprehensive Growth Plan and any other applicable officially adopted plan.
- b. The Planning Commission and other selected advisory board shall review proposed amendments in a timely fashion so that such recommendations that it may have, can be presented to the Town Council for its consideration. If the Planning Commission or other selected advisory board is not prepared to make recommendations to the Town Council for its consideration, it may request the Town Council to delay or continue final action on the amendment until such time as the Planning Commission or other selected advisory board can present its recommendation.
5. **Action by Town Council.** The Town Council may not take final action on proposed amendment until it has received the Planning Commission recommendation, or until 60 days have passed since the map amendment was referred to the Planning Commission, whichever occurs first.
  6. **Review criteria.** In making recommendations regarding amendments to the official zoning map, the Planning Commission shall consider and make findings on the following matters regarding the proposed amendment:
    - a. Consistency (or lack thereof) with the Comprehensive Growth Plan;
    - b. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood;
    - c. Suitability of the subject property for uses permitted by the current versus the proposed district;
    - d. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town; and
    - e. Availability of sewer, water and stormwater facilities generally suitable and adequate for the proposed use.
  7. **Town Council action.** The Town Council is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practical. Prior to adopting or rejecting any zoning map amendment, the Town Council shall adopt a statement describing whether its action is consistent with the adopted Comprehensive Growth Plan and explaining why the Council considers the action taken to be reasonable and in the public interest. Such statement is not subject to judicial review. Voting on map amendments shall occur in accordance with G.S. 160A-75. (This requires special voting margins.)



**D. Ultimate issue before Town Council on amendments.** When considering proposed official zoning map amendments:

1. The Town Council shall not consider any representations that, if the change is granted, the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. The Town Council shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.
2. The Town Council shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.
3. The Town Council shall avoid any action that would constitute arbitrary and discriminating treatment of particular properties, known as spot zoning.

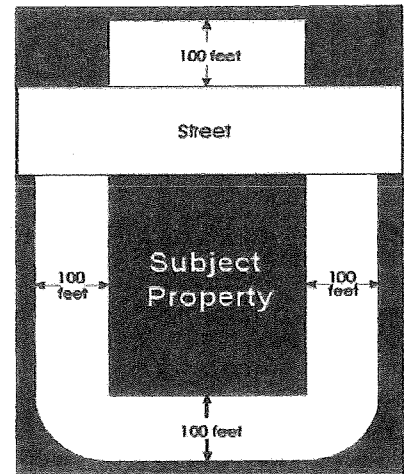
**E. Protests to zoning district changes.**

1. If a petition opposing a change in the zoning classification is filed in accordance with the provisions of this Section, then the proposed zoning map amendment may be adopted only by a favorable vote of at least three-fourths of the Town Council membership. For purposes of this subsection, vacant positions on the Council and members who are excused from voting shall not be considered members of the Council for calculation of the requisite supermajority.

2. To trigger the three-fourths vote requirements the petition must:

- a. Be signed by the owners of twenty percent or more of the area included in the proposed change; or

- b. Be signed by the owners of five percent of a 100-foot buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long that street right-of-way is 100 feet wide or less. When less than the entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine the owners of potentially qualifying areas.



Protest Petition Computation Area

- c. The provisions concerning protests shall not be applicable to any amendment to an adopted conditional use district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the conditional use district.
  - d. Be a written petition actually bearing the signatures and addresses of the requisite number of property owners and stating that the signers do protest the proposed change.
  - e. Be received by the Town Clerk at least two normal working days before the date established for a public hearing on the proposed amendment to allow the Clerk's determination of the sufficiency and accuracy of the petition.
  - f. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards of this subsection at the time of the vote on the zoning map amendment shall trigger the supermajority voting requirement.
- F. Modification of application.**
1. An applicant in a zoning matter may reduce the geographic scope and range of permitted uses or propose a district of lower density or intensity from that requested in the application by filing a statement of the same with the Planning Director.
  2. If the application is limited by excluding certain enumerated land uses, either in the original application or in the amendment thereto, the application shall be treated as for a conditional use zoning district. Any amendment which converts a zoning application into an application for a conditional use zoning district, and any amendment thereto, shall be signed by all the owners of all properties which are the subject of the application or amendment. A conversion to a conditional use zoning district requires full compliance with Section 3.13, including the submission a conditional use permit for a specific use.
- G. Withdrawal of zoning application.**
1. An applicant may withdraw a rezoning application at any time, by filing a statement of withdrawal with the Planning Director.
  2. The statement or withdrawal shall be signed by all persons who signed the application, or in the event of death or incompetence by the estate's lawful personal representative.

Town of Garner Unified Development Ordinance (UDO)

3. If a valid zoning protest petition shall have been filed, the zoning application may be withdrawn, only if the statement of withdrawal is filed no later than five working days prior to the date of the Town Council meeting date upon which the matter is to be returned for action by the Council. Thereafter, the application may be withdrawn only by leave of the Town Council, by majority vote.

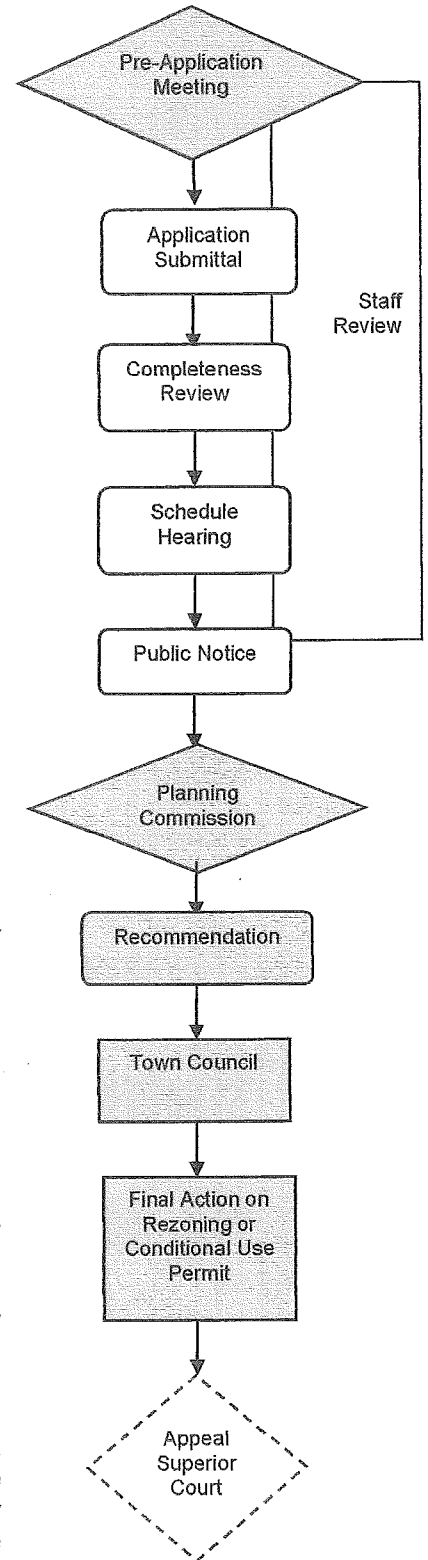
H. **Time lapse between similar applications.**

1. In the event of a withdrawal of an application prior to action by the Town Council on the merits, no application may be filed requesting the rezoning of any parcel contained in the withdrawn application prior to the expiration of a minimum period of six months from the withdrawal of the application.
2. When the Town Council has voted on a zoning application and the proposed rezoning has either been denied or has failed to be adopted by the vote required in the event of a valid protest petition, then the application shall be deemed to have expired.
3. No subsequent application requesting a zoning change for any parcel contained in an application which has expired may be made prior to the expiration of a minimum period of six months from the date of expiration.
4. No subsequent application requesting the same zoning category for any parcel contained in an application which has expired may be filed prior to the expiration of a minimum period of one year from the expiration.
5. The Town Council, by a three-fourths-majority vote, may waive the time-lapse requirements of this section if the Council deems it to be in the public interest to do so.

- I. **Appeals.** Appeals of rezoning decisions made by the Town Council shall be taken in accordance with Section 10.5, Judicial review.  
(Ord. No. 3376, §§ 8--11, 1-17-06; Ord. No. 3558, § 2, 7-7-09)

**3.13. Conditional use district zoning.**

- A. **Purpose.** It is the purpose and intent of this section to permit the Town of Garner to create conditional use zoning districts in which limited uses are permitted following approval by the Town Council.
- B. **Two-step process.** Conditional use district zoning shall include a two-step process consisting of a legislative rezoning and a separate conditional use permit following a quasi-judicial hearing. An application for the rezoning of a tract of land to a conditional use zoning district shall be treated the same as a standard rezoning, in accordance with the procedures established in Section 3.12.
- C. **Application.** Prior to the submission of an application for a conditional use district, all applicants shall request a pre-application conference in accordance with Section 3.1.B. If the applicant elects to petition for conditional use district zoning, the applicant must specify the actual use or uses, any additional conditions on the use of the property that the applicant may propose being attached to approval of the rezoning and accompanying conditional use permit and all other development regulations authorized by state law, which are intended for the property specified in the application. The intended use or uses and development regulations must be permitted in the corresponding general use district. The Town Council shall approve or disapprove the petition on the basis of the specific use or uses and development regulations requested.
- D. **Approval process.**
  - 1. **Submittal.** Subject to the application submittal requirements set forth in Section 3.1, the applicant shall concurrently submit a rezoning request and an application for a conditional use permit to the Planning Department. The rezoning request to a new zoning district shall not have any automatically permitted uses. The request shall include the signature of the owner or a power of attorney for the owner in a form acceptable to the Town.
  - 2. **Legally independent decisions.** The Town Council shall treat the rezoning request and the conditional use permit request as legally independent, separate decisions. However, the Town Council shall hear and decide the



rezoning request simultaneously with a conditional use permit application.

3. **Planning Director review.** The Planning Director shall process the rezoning request and the conditional use permit application at the same time for review by the Planning Commission and the Town Council.

4. **Planning Commission review.**

a. The Planning Commission shall review the rezoning request, subject to the requirements of Section 3.12, and the conditional use permit application at the same time. The Commission shall vote on the each application separately with the vote on the rezoning request first and the vote on the conditional use permit second.

b. The Planning Commission shall forward a separate written recommendation on each application (the rezoning request and the conditional use permit) to the Town Council for its consideration in a timely fashion according to the provisions of paragraph 5.b., below.

5. **Public hearing and action by the Town Council.**

a. A single, quasi-judicial public hearing shall be held to discuss both the rezoning and the conditional use permit application.

b. The Town Council shall not conduct the public hearing or take action on the applications until it has received the Planning Commission recommendation, or until 60 days have passed since the applications were first considered by the Planning Commission, whichever occurs first. Once the public hearing has been conducted the Town Council shall review the rezoning request, make a written finding and give its approval; approval with modifications or conditions; or disapproval. Where the rezoning request is denied, no further action shall be required.

c. Following Town Council approval of the rezoning request, the Town Council shall review the conditional use permit and make a written finding and give its approval; approval with modifications or conditions; or disapproval.

E. **Modification of application.**

1. An applicant in a zoning matter may reduce the geographic scope and range of permitted uses, propose a district of lower density or intensity, or adopt a more restrictive condition from that requested in the application by filing a statement of the same with the Planning Director. Once a condition has been proposed and reviewed at a public hearing, only more restrictive conditions shall be permitted.

Town of Garner Unified Development Ordinance (UDO)

2. An application for rezoning to a conditional use zoning district shall not be converted into an application for rezoning to a general use district at any point in the application review process. The applicant must submit a new application for rezoning to a general use district in accordance with the requirements of Section 3.12, Zoning map amendments (rezoning).

F. **Appeal.** Appeals of rezoning decisions made by the Town Council shall be taken in accordance with Section 10.5, Judicial review.  
(Ord. No. 3396, § 1, 4-3-06; Ord. No. 3558, § 2, 7-7-09)

**Application Fee: \$ 250.00 add \$10/acre**

Note: Application must be complete and Application fee must be paid at time of submittal

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## CONDITIONAL USE REZONING

***A written description of the area petitioned to be rezoned must be submitted along with a completed application and filing fee. A map depicting the property and area to be rezoned must accompany the application.***

OFFICE USE ONLY		
Application Number: _____	Date: _____	Receipt: _____
Related Projects: _____		

Property Location: \_\_\_\_\_

*Please Note: If only a part of a parcel is requested to be rezoned, write "part" after the Wake County Parcel ID Number and Real ID Number.*

Wake County Parcel Identification  
Number(s):

Corresponding Real Identification  
Number(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Area (acres): \_\_\_\_\_

Current Use of Property:

\_\_\_\_\_  
\_\_\_\_\_

Current Zoning: \_\_\_\_\_

Requested Zoning: \_\_\_\_\_

Based on the standards of the Unified Development Ordinance, this petition requests consideration of a Conditional Use District zoning authorizing or excluding (please specify) the uses and/or conditions described below. ***All uses and/or conditions requested to be authorized and/or excluded are allowed by right in the district requested and this fact is hereby acknowledged by the applicant.***

Proposed Uses and/or Conditions: (use separate paper if necessary) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### CONDITIONAL USE APPLICATION

Petitioner(s): \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
 Interest in Property: \_\_\_\_\_

Owner, Agent, Lessee, Contract Purchaser, Other

Property Owner(s): \_\_\_\_\_  
***If the Property Owner(s) is not the Petitioner(s), please attach a completed Owner's Authorization form.***  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Ownership is evidenced by Deed recorded in Books of Deeds: \_\_\_\_\_  
 Page \_\_\_\_\_, Wake County Register of Deeds

Site Designer: \_\_\_\_\_  
 Contact Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

#### **SIGNATURES (REQUIRED)**

The undersigned states the above information is true and correct as (s)he is informed and believes.

_____	_____	_____
Petitioner - Printed	Petitioner - Signature	Date

#### **NOTARY STATEMENT**

Sworn to and subscribed before me the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Notary  
 Public in and for the State of North Carolina.  
 My Commission Expires: \_\_\_\_\_

_____	_____	_____
Notary Public SEAL	Notary Public Printed	Date



## CONDITIONAL USE APPLICATION OWNER'S AUTHORIZATION

*If the owner(s) of this subject property are giving authorization for someone else to apply for the Conditional Use Rezoning and/or Permit, this authorization is to be completed and submitted at time of application.*

I(WE), \_\_\_\_\_, do hereby certify that I(We)  
(name(s) of owner(s) of subject property)

am (are) the owner(s) of the property legally described below and hereby certify that

I(We) have given authorization to \_\_\_\_\_ to  
(Name of Company and Representative)

apply for the Conditional Use Rezoning and/or Permit for My(Our) property.

Wake County Parcel Identification Number(s):

Corresponding Real  
Identification Number(s):

_____	_____
_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
Property Owner – Print

\_\_\_\_\_  
Property Owner – Signature      Date

### NOTARY STATEMENT

Sworn to and subscribed before me the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Notary  
Public in and for the State of North Carolina.

My Commission Expires: \_\_\_\_\_

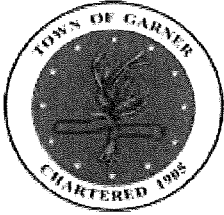
\_\_\_\_\_  
Notary Public  
SEAL

\_\_\_\_\_  
Notary Public Printed      Date

**TOWN OF GARNER PLANNING DEPARTMENT  
SITE PLAN/SUBDIVISION SUBMISSION FORM**

OFFICE USE ONLY

*Note: The review fee is due upon submission.*



**Town of Garner, NC  
Planning  
Department**

Case Number \_\_\_\_\_  
Date Received \_\_\_\_\_ **Receipt #** \_\_\_\_\_  
Related Projects \_\_\_\_\_  
Planning Commission Meeting Date \_\_\_\_\_  
Town Council Meeting Date \_\_\_\_\_

Type of Request: (Please check one)

- |                          |   |                  |
|--------------------------|---|------------------|
| <input type="checkbox"/> | Major Subdivision                       | \$250 + \$10/lot |
| <input type="checkbox"/> | Conditional Use Site Plan Review        | \$250            |
| <input type="checkbox"/> | Conditional Use Subdivision Plan Review | \$250 + \$10/lot |
| <input type="checkbox"/> | Special Use Site Plan Review            | \$250            |
| <input type="checkbox"/> | Special Use Subdivision Plan Review     | \$250 + \$10/lot |

Number of Copies Required:	Preliminary Review	<u>Ten (10) copies (24x36)</u>
	Planning Commission and Town Council Review	<u>Twenty (20) copies (24x36)</u>
	Town Council Final Action	<u>Ten (10) copies (24x36)</u>

Name of Development: \_\_\_\_\_

Property Location: \_\_\_\_\_

Parcel Id Number (PIN): \_\_\_\_\_ Total Acreage: \_\_\_\_\_ Zoning: \_\_\_\_\_

Deed Book/Page Number \_\_\_\_\_ Number of Lots and or Units (existing & proposed): \_\_\_\_\_ Building Square Footage: \_\_\_\_\_

Proposed Use of Property (apartments, shopping center, townhouse, etc): \_\_\_\_\_

Owner: _____	Contact Person: _____
Mailing Address: _____	Telephone: _____
_____	Fax: _____
_____	Email: _____
Owner Print _____ Date _____	Owner Signature _____ Date _____

Applicant: _____	Contact Person: _____
Mailing Address: _____	Telephone: _____
_____	Fax: _____
_____	Email: _____
Applicant Print _____ Date _____	Applicant Signature _____ Date _____

Site Designer: _____	Contact Person: _____
Mailing Address: _____	Telephone: _____
_____	Fax: _____
_____	Email: _____
Site Designer Print _____ Date _____	Site Designer Signature _____ Date _____

**TOWN OF GARNER  
OWNER'S AUTHORIZATION**

*If the owner(s) of this subject property are giving authorization for someone else to apply for an application to the Town of Garner for site/subdivision permits and/or rezoning requests, this authorization is to be completed and submitted at time of application.*

I(WE), \_\_\_\_\_, do hereby certify that I(We)  
(name(s) of owner(s) of subject property)

am (are) the owner(s) of the property legally described below and hereby certify that I(We) have given authorization to \_\_\_\_\_ to  
(Name of Company and Representative)

apply an application to the Town of Garner for site/subdivision permits and/or rezoning requests for My(Our) property.

Wake County Parcel Identification Number(s):

Corresponding Real  
Identification Number(s):

_____	_____
_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
Property Owner – Print

\_\_\_\_\_  
Property Owner – Signature      Date

**NOTARY STATEMENT**

Sworn to and subscribed before me the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Notary  
Public in and for the State of North Carolina.  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
SEAL

\_\_\_\_\_  
Notary Public Printed      Date

**Project J-8726**

**Liberty Healthcare Properties of W. Wake County, LLC – Morrisville Project**

The applicant did not demonstrate the ability to finance the proposed project. Total capital costs of \$13,859,714 and total working capital costs of \$1,585,103 are all to be financed via equity of the two owners of the applicant. The grand total to be financed from owner capital reserves is \$15,435,817. There is insufficient documentation provided on the owners' ability to fund a capital commitment that amounts to 100% of all funding required for this project. The documentation provided in the application includes only a letter from the owners committing funds to the project and a letter from a CPA in lieu of personal financial statements. To demonstrate the ability of individuals to contribute funds committed, personal financial statements are required and identification of the line items on the personal financial statements from which the funds will be made available is also required. Also, given the current environment with low mortgage interest rates, the only conceivable reason that the applicant proposed no mortgage funding is to attempt to gain some advantage on comparative review of financial projections.

Liberty entities have filed three applications. Each of these applications involves 120 new beds plus a relocation of 10 beds from Capital Nursing and Rehabilitation Center. As proposed, only one of these three applications could be approved since each proposes the relocation of the same beds from Capital Nursing and Rehabilitation Center. It is also noted that project support letters included in each of the applications are not specific to one particular project.

For all three Liberty applications, all of the sites selected do not currently have water and sewer service available to the sites for each of the projects.

Given a history of project delays and other CON development projects in North Carolina and other states, there is a high degree of doubt that the applicant could develop the proposed project in accordance with its project timetable for the following reasons:

- This project would be placed in a queue behind the other development projects listed on Page 21.
- The development projects include two CON projects in Mecklenburg County with 2007 application dates. Construction has not yet begun on either of these projects, and they have been approved for over three years. The applicant has indicated "N/A" for delays, which is not possible given the approval dates of these projects. From the information presented, sites have been acquired for these two projects, but no development has occurred to date.

Of all the applicants for a new facility, Liberty proposes the lowest raw food cost at \$5.00 per patient day.

**Project J-8726**

**Liberty Healthcare Properties of W. Wake County, LLC – Morrisville Project (continued)**

The projected semi-private room private pay rate of \$170 is less than the direct costs plus indirect costs less ancillary costs per patient day in Year 2, which is calculated at \$187.76.

**Project J-8727**

**Liberty Healthcare Properties of W. Wake County, LLC – North Raleigh Project**

The applicant did not demonstrate the ability to finance the proposed project. Total capital costs of \$15,667,836 and total working capital costs of \$1,587,250 are all to be financed via equity of the two owners of the applicant. The grand total to be financed from owner capital reserves is \$17,265,086. There is insufficient documentation provided on the owners' ability to fund a capital commitment that amounts to 100% of all funding required for this project. The documentation provided in the application includes only a letter from the owners committing funds to the project and a letter from a CPA in lieu of personal financial statements. To demonstrate the ability of individuals to contribute funds committed, personal financial statements are required and identification of the line items on the personal financial statements from which the funds will be made available is also required. Also, given the current environment with low mortgage interest rates, the only conceivable reason that the applicant proposed no mortgage funding is to attempt to gain some advantage on comparative review of financial projections.

Liberty entities have filed three applications. Each of these applications involves 120 new beds plus a relocation of 10 beds from Capital Nursing and Rehabilitation Center. As proposed, only one of these three applications could be approved since each proposes the relocation of the same beds from Capital Nursing and Rehabilitation Center. It is also noted that project support letters included in each of the applications are not specific to one particular project.

For all three Liberty applications, all of the sites selected do not currently have water and sewer service available to the sites for each of the projects.

Given a history of project delays and other CON development projects in North Carolina and other states, there is a high degree of doubt that the applicant could develop the proposed project in accordance with its project timetable for the following reasons:

- This project would be placed in a queue behind the other development projects listed on Page 21.
- The development projects include two CON projects in Mecklenburg County with 2007 application dates. Construction has not yet begun on either of these projects, and they have been approved for over three years. The applicant has indicated "N/A" for delays, which is not possible given the approval dates of these projects. From the information presented, sites have been acquired for these two projects, but no development has occurred to date.

**Project J-8727**

**Liberty Healthcare Properties of W. Wake County, LLC – North Raleigh Project (continued)**

The applicant does not comply with 10A NCAC 14C.1101(e) for the following reasons:

- The applicant's site is zoned R-4. The applicant indicates that a Special Use Permit would be required to allow for a nursing facility use in this zoning classification.
- Nursing homes fall under the Rest Home category for zoning purposes in the City of Raleigh.
- Rest homes are not a permitted use in R-4. Rezoning, not a special use permit, will be required. The applicant did not provide any information on the rezoning procedures or an explanation on the basis on why a rezoning would be approved.

Of all the applicants for a new facility, Liberty proposes the lowest raw food cost at \$5.00 per patient day.

The projected semi-private room private pay rate of \$170 is less than the direct costs plus indirect costs less ancillary costs per patient day in Year 2, which is calculated at \$188.09.

The project is located in House Creek Township. The applicant did not make any adjustment for CCRCs in its bed need projection for House Creek Township.

**Project J-8730**  
**Cary Operations, LLC**

The applicant proposes the following units in the 120-bed facility:

- Post Acute Rehabilitation Services – 60 beds
- Memory Care – 30 beds
- Long Term Care – Hospice – 30 beds
- Long Term Care – 15 beds

Despite proposing these four units, the applicant did not provide any utilization, staffing, rate and financial projections for any of the units proposed, instead showing this information for the total facility only. There is no way to evaluate the staffing, case mix, rates, and financial feasibility for any of the units.

The applicant does not demonstrate the ability to finance project costs and working capital for the following reasons:

- The project is to be funded in part with \$2,600,000 in reserves of Daniel Straus. The documentation provided in the application includes only a letter from the Mr. Straus committing funds to the project and a letter from a CPA simply stating: “.... based on my familiarity with the collective personal financial position of Mr. Straus, I believe he has liquid financial assets in more than sufficient amount to fund all of the equity requirements necessary to develop The Rehabilitation and Nursing Center at Cary”. From the information presented, there is no way to verify if sufficient funds are available and there is no way to identify the source of the funds. To demonstrate the ability of individuals to contribute funds committed, personal financial statements are required and identification of the line items on the personal financial statements from which the funds will be made available is also required.
- Total working capital does not include start-up costs. When the start-up costs are added to the working capital and the project costs, total funding needs exceed the total source of funds. Based on information on Page 142, the adjusted total funding needs including start-up costs are \$13,108,340 (\$12,964,968 per Page 142 plus start-up costs of \$,970). Total amount funded is \$13,000,000, which is less than the total needs.

The applicant does not meet 10A NCAC 14C.1101(d) for the following reasons:

- There is no documentation of zoning from a local authority. Based on information provided on Page 13 of the Phase I Environmental Assessment, the property is zoned OI Office and Institutional with a CU-Conditional Use Zoning Designation.
- From the excerpts from the Town of Cary Land Development Ordinance included in Exhibit 5, the following is included on Page 8 of 49 and highlights strict development controls in the OI district:



**Project J-8730**  
**Cary Operations, LLC (continued)**

*OI – Office and Institutional District: The OI district provides for the development of office and community institutions that have similar development characteristics and require locations close to the more intensive commercial districts. The district requires strict development controls since, in most instances, these districts will be located adjacent to residential districts. (underscores are as shown in the ordinance).*

- Nursing homes are subject to Use Regulations (Section 5-2.1), which were not provided by the applicant and are very relevant to the proposed project site. These Use Regulations are attached.
- Included in the attached Use Regulations is a table showing a maximum density limit 20 units per acre for nursing homes in OI zoning. Per discussions with representatives of the Town of Cary Planning Department, a unit in a nursing home is considered to be one room that could either be private or semi-private. The applicant proposes to have 40 private rooms and 40 semi-private rooms, or a total of 80 rooms (or units for purposes of density requirements). The applicant's site is only 3.018 acres, which would allow for a maximum density of 60 units. The applicant is proposing 80 units and does not meet the maximum density requirements. The proposed project cannot be developed on the site selected. To develop the facility as proposed, the applicant would need a site with a minimum size of four acres. The only way that the 120 beds proposed would fit on the applicant's site is if all of the rooms were semi-private rooms (a total of 60 rooms).
- The Use Regulations also reference open space requirements in Section 8.3.2, which are also attached but were not provided by the applicant.

This project will not improve the geographic distribution of beds in Wake County. The proposed location is only 0.73 miles from Cary Health and Rehabilitation Center (Source: Mapquest).

The following are findings regarding Medicaid utilization:

- Proposed Medicaid utilization of 50.6% is the second lowest of the applicants competing for a new facility.
- Blue Ridge Health Care Center had a Medicaid utilization of 45.2% for FYE September 30, 2010 based on license renewal application data. This utilization is lower than the average Medicaid utilization in Wake County.

The applicant's nurse staffing ratio of 3.50 hours per patient day is the second lowest among the applicants competing for a new facility.

**Project J-8730**  
**Cary Operations, LLC (continued)**

The only North Carolina nursing facility operated by the applicant or its affiliates is Blue Ridge Health Care Center in Raleigh. The following are the private pay rates at Blue Ridge Health Care Center from the 2011 license renewal application, which are by far the highest private pay rates among the freestanding nursing facilities in Wake County.

- Private room - \$455
- Semi-private room - \$405
- Ward room - \$195

The proposed facility design is two stories.

Please note that the applicant indicates on Page 158 that it has fee simple title to the site. The applicant only has a purchase contract on the site.

**(G) Nursing Home**

- (1) The nursing home shall not exceed the density set forth in the following table:

TABLE 5.2-2: DENSITY FOR NURSING HOMES	
District	Density (units/acre)
TR	10
GC RMF TC	15
★ OI ORD	20
Mixed Use Overlay	no density limit

- (2) All retail stores and personal service establishments located within the nursing home shall be part of an existing building and shall not exceed twenty (20) percent of the floor area of such building; and
- (3) The nursing home shall provide open space and/or recreational facilities in the same amount and ratios as required in Section 8.3.2 of this Ordinance.

**(H) Patio Dwelling**

- (1) In the RMF district, the density of patio dwelling units shall not exceed twelve (12) dwelling units per acre.
- (2) In the TR district, the density of patio dwelling units shall not exceed six (6) dwelling units per acre.
- (3) There are no density limits for patio homes within the mixed use center overlay district.
- (4) Density limits for patio homes within the TC district shall be in accordance with the Town Center Area Plan.

**(I) Residential Use in Non-Residential Building**

In the OI and ORD districts, residential uses may be permitted in non-residential buildings without a rezoning provided the following standards are met:

- (1) A site plan (see Section 3.9) shall be required prior to occupation of any residential uses;
- (2) At least fifty (50) percent of the building's total floor space (in square feet) must be reserved for office uses;
- (3) Up to fifty (50) percent of the building's total floor space (in square feet) may be utilized for residential uses;
- (4) No more than twenty (20) percent of the building's total floor space (in square feet) may be utilized for retail or personal services uses;

- (a) Where necessary to eliminate access onto arterial streets or thoroughfares;
- (b) To reasonably utilize irregularly-shaped land;
- (c) To reasonably utilize land with severe topography;
- (d) To reasonably utilize land with limited sites suitable for septic tank nitrification fields and/or;
- (e) To provide for the protection of significant natural or cultural resources.

No flag lot will be allowed if it increases the number of access points onto a major thoroughfare. Existing subdivisions shall not be re-subdivided to create flag lots.

A note must be placed on any plat for recording flag lots noting that no public rear-yard garbage pickup will be provided for houses located more than one hundred twenty-five (125) feet from a public street.

Use of a single driveway, granted through an easement to serve adjoining flag lots or to serve a flag lot and an adjoining conventional lot, is permitted and encouraged to reduce access points on public streets.

(Ord. No. 04-001, 1-8-04; Ord. No. 05-001, 1-13-05; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2010-LDO-05, 12-16-10)

### 8.3 USES REQUIRING SITE PLANS

#### 8.3.1 General Design Standards

All site plans submitted under Section 3.9 of this Ordinance, and all uses for which site plans are submitted, shall meet the following standards before they may be approved by the Town Council or the Planning Director.

#### 8.3.2 Private Open Space

The developer of each residential development requiring development approval shall set aside at least five hundred (500) square feet of open space for each dwelling unit. Such open space shall meet the standards of this section:

##### (1) *Locational Criteria*

To the maximum extent feasible, where significant natural and scenic resource assets exist on a property, the developer shall give priority to their preservation through public park or greenway dedication or as private open space. In reviewing the location of private open areas, the Planning Director shall use all applicable plans, maps, and reports to determine whether significant resources exist on a proposed site that should be protected, with priority being given to the following areas (which are not listed in a particular order):

- (a) Wetlands;

- (b) Flood Hazard Area;
- (c) Lakes, rivers, and stream/UTB corridors;
- (d) Wildlife migration corridors; and
- (e) Steep slope areas.

**(2) *The Following Shall Not Be Counted Towards Private Open Space Areas:***

- (a) Private yards;
- (b) Public or private streets or rights-of-way;
- (c) Open parking areas and driveways for dwellings;
- (d) Land covered by structures; and

**(3) *Use of Private Open Space***

Private open space shall not be disturbed, developed, or improved, with any structures or buildings, except for the limited purposes allowed below.

- (a) Facilities for active recreation (equipment for such uses shall be indicated on the site and/or subdivision plan provided by the developer);
- (b) Private open space may include passive recreational and educational purposes approved by the Planning Director, including but not limited to walking, biking, picnicking, fishing, preservation of natural areas and scenic resources, parks, environmental education, and wildlife habitat protection.
- (c) Private open space shall be distributed throughout the development and located so as to be readily accessible and useable by residents. A portion of the open space should provide focal points for the neighborhood.
- (d) Clearing of underbrush and debris and the provision of walks, fountains, fences, and other similar features are allowed.

**(4) *Design Criteria***

Land set aside for private open space shall meet the following design criteria, as relevant:

- (a) The lands shall be compact and contiguous unless the land shall be used as a continuation of an existing trail, or specific topographic features require a different configuration. An example of such topographic features would be the provision of a trail or private open area along a riparian corridor.

- (b) Where private open areas, trails, parks, or other public spaces exist adjacent to the tract to be subdivided or developed, the private open space shall, to the maximum extent feasible, be located to adjoin, extend, and enlarge the presently existing trail, park, or other open area land.

**(5) Ownership**

All private open space shall be owned jointly or in common by the owners of the development.

(Ord. No. 05-001, 1-13-05; Ord. No. 2007-04, 3-22-07; Ord. No. 2008-LDO-01, 9-25-08)

**8.4 ALTERNATIVE DEVELOPMENT OPTION: CLUSTER RESIDENTIAL SUBDIVISIONS**

**8.4.1 Purpose**

This Section provides an optional process and standards for cluster housing development. The Section is intended to encourage and allow for new concepts of traditional single-family housing development so that variations of design may be allowed, provided that the net residential density shall be no greater than permitted in the district in which the development is proposed. This shall not be construed as granting variances to relieve hardship.

A conventional subdivision generally covers the entire developable portion of a site with residential lots. These lots are equal to or greater than a required minimum size designed to approximate the maximum permitted development density under the zoning regulations. A cluster subdivision allows for the reduction in the lot square footage minimum and setbacks provided that non-regulatory or bonus open space is provided. This permits greater net densities on portions of the site while permanently preserving additional open space and other important environmental resources such as those identified in the Open Space and Historic Resources Plan.

This type of development is more sensitive to the natural environment by reducing the total amount of disturbance that may occur to the land in comparison to a conventional development while allowing the developer to reduce site improvement costs. The use of clustered subdivisions is not intended to allow increased density for undevelopable or unusable land already protected by other provisions of this Ordinance. The remnant land not designated as building lots is required to be left undeveloped, and must serve the purpose of effective buffering, passive recreation, and protection of significant vegetation, historic resources or scenic qualities.

**8.4.2 Applicability**

The cluster development option is available for property located within a zoning district that permits single-family detached dwelling units (e.g., R-20, and R-40), with the exception of property located within the Conservation Residential Overlay District. The development of the property must comply with all zoning conditions when using the cluster option. The size of the tract used under this option must be a minimum of ten (10) acres.

**8.4.3 Approval of Cluster Site and/or Subdivision Plans**

The approval authority, Staff or Town Council, may allow subdivision development on reduced lot sizes in return for the provision of bonus open space and other design requirements set forth within this Section. In order to approve a development plan using this option, the Town must determine that the benefits of the cluster approach will prevent the loss of natural features without increasing

**Project J-8731**  
**Raleigh Operations, LLC**

The applicant proposes the following units in the 120-bed facility:

- Post Acute Rehabilitation Services – 60 beds
- Memory Care – 30 beds
- Long Term Care – Hospice – 30 beds
- Long Term Care – 15 beds

Despite proposing these four units, the applicant did not provide any utilization, staffing, rate and financial projections for any of the units proposed, instead showing this information for the total facility only. There is no way to evaluate the staffing, case mix, rates, and financial feasibility for any of the units.

The applicant does not demonstrate the ability to finance project costs and working capital for the following reasons:

- The project is to be funded in part with \$2,680,000 in reserves of Daniel Straus. The documentation provided in the application includes only a letter from the Mr. Straus committing funds to the project and a letter from a CPA simply stating: “.... based on my familiarity with the collective personal financial position of Mr. Straus, I believe he has liquid financial assets in more than sufficient amount to fund all of the equity requirements necessary to develop The Rehabilitation and Nursing Center at Raleigh”. From the information presented, there is no way to verify if sufficient funds are available and there is no way to identify the source of the funds. To demonstrate the ability of individuals to contribute funds committed, personal financial statements are required and identification of the line items on the personal financial statements from which the funds will be made available is also required.
- Total working capital does not include start-up costs. When the start-up costs are added to the working capital and the project costs, total funding needs exceed the total source of funds. Based on information on Page 145, the adjusted total funding needs including start-up costs are \$13,507,367 (\$13,363,995 per Page 145 plus start-up costs of \$143,372). Total amount funded is \$13,400,000, which is less than the total needs.

Development of the proposed project may be impacted by the following:

- The property is currently improved with a closed restaurant building that would need to be demolished. The Phase I Environmental Assessment included in Exhibit 5 indicates that there are asbestos-containing materials in the existing building and recommends a lead-based paint survey and asbestos survey prior to building demolition.
- A portion of the site is located on the flood plain.

**Project J-8731**  
**Raleigh Operations, LLC (continued)**

- In Exhibit 5, the letter confirming water and sewer availability is highly suspect and is not consistent with letters obtained by other applicants from the City of Raleigh confirming utilities availability. The letter also does not describe the size of the water and sewer lines.

This project will not improve the geographic distribution of beds in Wake County. The proposed location is only 0.50 miles from Sunnybrook Healthcare and Rehabilitation Specialists, 0.52 miles from Capital Nursing and Rehabilitation Center, and 1.69 miles from Tower Nursing and Rehabilitation Center (Source: Mapquest).

The following are findings regarding Medicaid utilization:

- Proposed Medicaid utilization of 50.6% is the second lowest of the applicants competing for a new facility.
- Blue Ridge Health Care Center had a Medicaid utilization of 45.2% for FYE September 30, 2010 based on license renewal application data. This utilization is lower than the average Medicaid utilization in Wake County.

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- Ward room - \$195

The proposed facility design is two stories.

Please note that the applicant indicates on Page 161 that it has fee simple title to the site. The applicant only has a purchase contract on the site.