



NC DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary
MARK PAYNE • Director, Division of Health Service Regulation

RESPONSE REQUIRED

February 28, 2020

Timothy Walsh
2334 S. 41st Street
Wilmington, NC 28403

Conditional Approval

Project ID #: J-11803-19
Facility: Liberty Commons of Durham County
Project Description: Relocate 49 NF beds from Liberty Commons Silas Creek pursuant to Policy NH-6 to develop a new NF which is a change of scope for Project ID #G-10216-13 (Relocate 100 NF beds from Liberty Commons Springwood)
County: Durham
FID #: 190528

Approved Capital Expenditure: \$8,920,875
Conditions of Approval: See Attachment A
Approved Timetable: See Attachment B
Last Date to Appeal: March 30, 2020
Required State Agency Findings: Enclosed

Dear Mr. Walsh:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) has conditionally approved the above referenced certificate of need application. This decision was made after review of the application or applications if the review was competitive, consideration of the Certificate of Need Law and regulations promulgated thereunder, the State Medical Facilities Plan, written comments if any, responses to comments if any, and other publicly applicable information.

The conditional approval is valid only for the approved capital expenditure shown above. If the capital cost will exceed the approved capital expenditure amount by more than 115%, the applicant must first obtain a new certificate of need.

Response to the conditions in Attachment A should be submitted to the Agency no later than 35 days from the date of the decision. Failure to respond within this time period may result in the Agency making a determination not to issue a certificate of need for the project referenced above.

The timetable for completion of the project is the timetable outlined in the certificate of need application, unless an adjustment has been made by the Agency because the review period was extended. The approved timetable for this project is found in Attachment B.

Note: The applicant shall not begin developing this project until after the certificate of need has been issued and the certificate of need will not be issued until the applicant has documented that all

conditions that must be met prior to issuance of the certificate of need have been met. Furthermore, if the project requires that plans be submitted to the Construction Section, those plans will not be reviewed or approved until after the certificate of need has been issued.

The Certificate of Need law provides that any affected person has thirty (30) days after the date of the decision to file a petition for a contested case on this approval. Further, if you are aggrieved by any of the conditions you may file a petition for a contested case hearing in accordance with N.C. Gen. Stat. §150B, Article 3. This petition must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714 within thirty (30) days of the date of this decision. Effective October 1, 2009, OAH requires a filing fee with submittal of petitions for contested cases. Please direct all questions regarding this fee to the OAH Clerk's Office (919-431-3000).

N.C. Gen. Stat. §150B-23 provides that a party filing a petition must also serve a copy of the petition on all parties to the petition. Therefore, if you file a petition for a contested case hearing, you must serve a copy of the petition on the Department of Health and Human Services by mailing a copy of your petition to:

Lisa G. Corbett
Department of Health and Human Services,
Office of Legal Affairs,
Adams Building – Room 154
2001 Mail Service Center
Raleigh, North Carolina, 27699-2001

It is requested that a copy of the petition also be served on the Agency.


The certificate of need will not be issued before the completion of thirty day appeal period which ends on the date shown above. If a contested case petition is filed with OAH within the thirty day appeal period, the certificate will not be issued until the appeal is resolved.

If the decision is appealed, the timetable set forth in this letter will be adjusted accordingly before the certificate of need is issued. Please contact this office if any clarification of this decision is required.

Please refer to the Project ID # and Facility ID # (FID) in all correspondence.

Sincerely,


Gregory F. Yakaboski
Project Analyst


Lisa Pittman
Assistant Chief

Enclosures:

Attachment A: Conditions of Approval
Attachment B: Approved Timetable
Required State Agency Findings

cc: Construction Section, DHSR
Nursing Home Licensure and Certification Section, DHSR

Attachment A
Conditions of Approval

1. Liberty Healthcare Properties of Durham County, LLC shall materially comply with all representations made in the certificate of need application.
2. Liberty Healthcare Properties of Durham County, LLC shall relocate no more than 49 NF beds from Liberty Commons of Silas Creek pursuant to Policy NH-6 to develop a new NF which is a change of scope for Project ID #G-10216-13 (Relocate 100 NF beds from Liberty Commons Springwood)
3. Upon completion of the project, Liberty Commons of Durham County shall be licensed for no more than 49 nursing facility beds. Liberty Commons of Silas Creek (Project ID#G-10216-13) will be licensed for no nursing facility beds upon completion of this project, Project ID# G-11802 (relocate 18 NF beds from Liberty Commons of Silas Creek to Summerstone Health and Rehabilitation Center) and Project ID# G-11809 (relocate 33 NF beds from Liberty Commons of Silas Creek to The Oaks).
4. Liberty Healthcare Properties of Durham County, LLC shall develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes.
5. No later than three months after the last day of each of the first three full fiscal years of operation following initiation of the services authorized by this certificate of need, Liberty Healthcare Properties of Durham County, LLC shall submit, on the form provided by the Healthcare Planning and Certificate of Need Section, an annual report containing the:
 - a. Payor mix for the services authorized in this certificate of need.
 - b. Utilization of the services authorized in this certificate of need.
 - c. Revenues and operating costs for the services authorized in this certificate of need.
 - d. Average gross revenue per unit of service.
 - e. Average net revenue per unit of service.
 - f. Average operating cost per unit of service.
6. For the first two years of operation following completion of the project, Liberty Healthcare Properties of Durham County, LLC shall not increase private pay charges more than 5% of the projected private pay charges provided in Section Q of the application without first obtaining a determination from the Healthcare Planning and Certificate of Need Section that the proposed increase is in material compliance with the representations in the certificate of need application.
7. Liberty Healthcare Properties of Durham County, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Agency in writing prior to issuance of the certificate of need.

Attachment B
Approved Timetable

1. Drawings Completed _____ March 1, 2021
2. Construction / Renovation Contract(s) Executed _____ June 1, 2021
3. 25% of Construction / Renovation Completed
(25% of the cost is in place) _____ March 1, 2022
4. 50% of Construction / Renovation Completed _____ August 1, 2022
5. 75% of Construction / Renovation Completed _____ January 1, 2023
6. Construction / Renovation Completed _____ July 1, 2023
7. Building / Space Occupied _____ October 1, 2023
8. Licensure Obtained _____ October 1, 2023
9. Services Offered (required) _____ October 1, 2023
10. Medicare and / or Medicaid Certification Obtained _____ November 1, 2023
11. First Annual Report Due _____ December 31, 2024